IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945.

No. 587-589

EDWIN J. CREEL
Petitioner

vs.

ROBERT T. CREEL
Respondent

PETITION OF EDWIN J. CREEL, FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

FOR REVIEW OF DECISIONS OF THAT COURT DISMISSING APPEALS NOS. 8,770 AND 8,823 AND AFFIRMING IN NO. 8,910.

EDWIN J. CREEL,
in proper person.

INDEX.

CASES CITED.

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PETITION FOR WRITS OF CERTIORARI FOR REVIEW OF DECISIONS DISMISSING APPEALS NOS. 8,770 AND 8,823 AND AFFIRMING IN NO. 8,910.

To the Honorable, The Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, Edwin J. Creel, prays that a writ, or writs, of Certiorari issue to the United States Court of Appeals for the District of Columbia, to review various portions of a judgment entered in the above entitled cause on May 21, 1944; and which said portions of said judgment decreed dismissal of petitioner's Appeals No. 8,770 and No. 8,823, and which entered an affirmance in No. 8,910.

The Sister Petition.

A second appeal by petitioner, No. 8,823 was also dismissed by that same Judgment, on the motion of Respondent, and on the ground that it too had been taken from a non-appealable order.

In a third appeal by petitioner, No. 8,910; the order appealed from — an Order Finally Confirming the Sale of the Partnership Business to Respondent, (R. 524) — was affirmed.

For reasons later stated, it has been considered advisable to treat these two further appeals, as a second unitary group. These two further appeals, have, therefore, been covered in a separate, but sister petition.

The underlying statement of fact, for all three appeals however, is included principally, in this present petition and brief.

Jurisdiction.

The judgment complained of (R. 913) was entered as to all three appeals on May 21, 1945. A timely motion for rehearing was filed on June 5th (R. 914). Motion for rehearing denied June 6th, (R. 922).

On September 5th, petitioner was granted an extension of time to October 6th for filing petitions for certiorari, (R. 929). On October 5th petitioner was granted a further extension of time to November 5th, for filing petitions for certiorari, (R. 929).

Jurisdiction rests on Sec. 240 (a) of the Judicial Code as amended by Act of February 13, 1925.

Statute Involved.

Sec. 101, Title 17, of the District of Columbia Code, 1940; is of particular importance as to the two dismissed appeals No's 8,770 and 8,823; because of the unusual jurisdiction, that is given the Court of Appeals of the District, as to appeals from interlocutory orders.

The relevant portions of that Section are as follows:

> "*Any party aggrieved by any final order, judgment, or decree* of the District Court of the United States for the District of Columbia, or any Justice thereof, may appeal therefrom to the said Court of Appeals.
>
> *Appeals shall also be allowed* to said Court of Appeals *from all interlocutory orders* of the District Court * * * *whereby the possession of property is changed or affected*, such as orders for the appointment of receivers, granting injunctions, dissolving writs of attachment, and the like." (Italics added.)

Federal Rule Involved.

Rule 54-b. Federal Rules of Civil Procedure.

> "Judgment at various stages. *When more than one claim for relief is presented in an action*, the court at any stage, *upon a determination of the issues material to a particular claim, and all counterclaims arising out of the transaction* or occurrence which is the subject matter of the claim, *may enter a judgment disposing of such claim.*
>
> *The judgment shall terminate the action with respect to the claim so disposed of*, and the action shall proceed as to the remaining claim."

Brief History of the Litigation.

The three present appeals have originated in the partnership dissolution, receivership, and accounting case of Creel v. Creel, equity 55,407, in the District Court of the United States for the District of Columbia.

The Bill of Complaint (R. 2) was filed by Respondents, on Feb. 28, 1933. A receiver was appointed on March 31, 1933. The appointment of the receiver was affirmed on Appeal, June 25, 1934; 63 App. D. C. 384; 73F. 2nd, 107. Petition for Certiorari was denied by the Supreme Court; 294 U. S. 723.

No other appellate decisions on the merits, have been rendered in the case, excepting only the decision on the present three appeals. This is reported in 149 F. 2nd 830, and is also printed in the record, (R. 913).

The Partnership Business.

The partnership business involved is that of Creel Bros., a comparatively large auto-parts jobbing and electric service business of 1811 14th St. N. W., Washington, D. C.

The business assets had an appraised value on Feb. 1st, 1944, of approximately $220,000, exclusive of some $79,000., in the bank balance of the firm as of that date (R. 368). And since the firm had raised its balance to $140,000 on Jan. 15, 1944, with bills paid (R. 902) it can be estimated that the business in earning approximately $70,000 per year.

It can also be fairly estimated, that the firm now has a net worth in excess of $450,000; and also that the firm now has over $200,000 in its bank balance.

The Partners Interests.

The partnership business was founded by petitioner in 1919. A few months later, Respondent, petitioner's younger brother, was taken into the partnership on a 40% basis. A little later petitioner gave him an additional 10% interest. Since that time each partner has owned a ½ interest;

except that through an allegedly corrupt finding of the Auditor, (R. 284), Respondent was given credit for an alleged excess capital contribution of $4933.60. (R. 174.)

General Purpose of the Three Appeals.

Certiorari is sought in this cause, under two general phases of this Court's jurisdiction.

That is: Certiorari is sought under the more general supervisory powers of the Court; for general review and correction of an alleged criminal abuse of receivership, that has been carried on against this petitioner, in this suit, for more than 12½ years past.

This more general conspiracy has had for its original object, the seizure of control, of a valuable partnership business, through abuse of this receivership; and with the primary aim, that the control of the partnership business, would be turned over to Respondent, as manager under the receiver; that he himself had had appointed more than 12½ years ago.

A second aim of the said conspiracy was, that by that means, it was proposed to have petitioner's income shut off, through the seizure of all of petitioner's property; and so that thereby, petitioner would ultimately be compelled to sacrifice his interests in the partnership, to Respondent, the plaintiff partner.

And this fraudulent scheme—in its more general aspects—has been carried on against petitioner, and under this receivership, for more than 12½ years past.

The More Specific Review Requested.

Within the past four years, however; a change has appeared in the general aim of the conspiracy. That is, it

is no longer a scheme merely to hold control of the partnership business, and to shut of petitioner's income thereby.

Instead in this later phase; the aim has been to put the partnership business up for sale, under conditions which might seem to indicate a fair public sale; but which conditions actually were so arranged, that a purchase by any one else than petitioner, would be defeated by the Receiver; or by attempted intimidation, through threats of loss of the firm's agencies, or employees.

And out of this last phase, has arisen petitioner's request for a more specific review and reversal, of the three orders appealed from under the present three appeals.

In Appeal No. 8,770 petitioner asks for reversal of an order of resale that was entered against this petitioner on March 22, 1944.

That is, on Feb. 1st, 1944, the partnership property was sold at public auction to petitioner, at a bid price of $240,500. Petitioner's right, however, to complete that purchase, was defeated by the illegal demands of the receiver, as to the amount payable as balance due on the property.

And on petitioner's refusal to complete the purchase of the property, on the receiver's terms; the Receiver then had an order of resale entered against petitioner.

That said Order of Resale, (R. 339) of March 22, 1944; held petitioner in default; ordered the return of a $10,000 deposit to petitioner; and further ordered the resale of the property at petitioner's risk and cost.

Appeal No. 8,770 was Taken from that Order of Resale. And in that appeal, No. 8770, petitioner asks that the said Order of resale be set aside and quashed; that the

property be ordered turned over to this petitioner; at the bid price of $240,000; and as of the original sale date of Feb. 1st, 1944; and under the terms of the original order of sale; as those terms might be properly interpreted and determined by this Court.

The Second Appeal No. 8823.

The property was again offered for sale, under the said Order for resale, on May 1st, 1944. At that time, it was apparently supposed, that petitioner would be afraid to again bid on the property; and so that the property could then be sold to Respondent.

However, the order for resale was so framed, by a reference to the original order of sale, as to give petitioner a specific right to bid on the property; and to become the purchaser at the resale.

As the said supposed resale on May 1st, therefore; petitioner again outbid, respondent. And under those conditions, the Receiver then stopped the sale, and merely took deposits and the bids of the two parties, to report to the Court.

Then in seeming disregard of statutory provisions; Mr. Justice Goldsborough, on May 24th entered a so-called "Order on the Receiver's petition for instructions." (R. 466.)

This said Order, of May 24th, provided for neither a public nor a private sale; these being the only two forms allowed by statute. Instead, that order provided that Petioner should have the right, for 30 days, to purchase the property at $240,500; but provided that the purchase be completed within 30 days. *No one however, was authorized to sell the property to petitioner.*

Since petitioner had a valid appeal pending in No. 8,770; petitioner refused to attempt to buy the property under that illegal scheme; although the price was supposed to be the same. Instead, petitioner preferred to rely on his appeal, No. 8,770; and one reason was, that the assets that were supposed to be sold under that order of May 24th, could not be identified.

On June 23rd, therefore; and for the purpose of blocking the obviously intended sale to Respondent; petitioner filed notice of his second appeal No. 8,823, as against the "Order on the Receiver's petition for instructions" of May 24th.

Petitioner's Third Appeal, No. 8,910

The said Order of May 24th, provided further that if petitioner failed to complete the purchase within 30 days, and which would have been an impossibility—that then Respondent should have the right to buy the property at $240,000; provided that Respondent put up a deposit of $10,000; and provided that he completed the purchase, within a further 30 days.

Immediately after the expiration of the 30 days allowed for purchase by petitioner; *the Receiver then accepted the offer* of Respondent, to purchase the property; and Respondent paid down the $10,000 deposit. (R. 471-476.)

The Receiver was not authorized to accept the said offer. But, nevertheless, the Receiver reported the matter to the Court; although it would have been impossible for Respondent, under the law, to hove completed the purchase within 30 days.

Furthermore, under the Order of May 24th, under which Respondent "purchased" the property, it was physically impossible to identify the assets, supposedly sold to Re-

spondent. And this error continued all through the further proceedings, and including the final confirmation of the sale to Respondent.

It appears that the acceptance of an offer, by an official authorized to sell, is all that a judicial sale at public auction amounts to. For the acceptance of the high bid, at a judicial sale, at public auction; is always accepted subject to confirmation by the Court.

And in Brignardello vs. Gray, 68 U. S. 627; 17 L. Ed. 693; this Court held that "An officer of the court may erroneously suppose that the power to sell is given by a decree, yet if he does sell, his act is without authority of law, and is void."

It would appear that the Receiver's acceptance of Respondent's offer to buy; must likewise be void, and also—as in Brignardello vs. Gray—that a later confirmation by the Court would do nothing to remedy the defect.

In any case, the existence of that defect was sufficient to deter petitioner from attempting to purchase the property under the Order of May 24th. And that, it would appear, under other rulings of this Court, would indicate a sufficient chilling of the bidding to void the sale, to Respondent, in any event.

Respondent did not of course complete the purchase, within the 30 days, as required by the order of May 24th.

Instead on Aug. 30, 1944; or more than 30 days later; an Order Nisi was entered by the District Court. That Order Nisi confirmed *the acceptance of the said offer*, of Respondent, by the Receiver. That Order Nisi further provided, that the said sale to Respondent, should be finally ratified and confirmed, unless cause to the contrary be

shown, or a higher offer acceptable to the Court, be made on or before Oct. 9th.

Again it was petitioner's opinion that that procedure failed completely to conform to the statutory requirements, for either a public or a private sale. And petitioner again refused to make any counter offer, under that Order Nisi, even though an additional $30,000, or $40,000 of profits, had piled up in the business, since the sale to petitioner, at the bid price of $240,500, on Feb. 1st.

And this appearance of illegality, as a means of chilling the bidding, would again seem, under repeated rulings by this Court, as an all sufficient bar to the validity of the sale to Respondent.

Furthermore, as before stated, the assets supposedly sold to Respondent cannot be identified. (R. 916, par. 30-31.) Also the terms of such sale, if it was a private sale, were never advertised as required by statute. Instead only a copy of the Order Nisi was published, and it merely states that the terms are all cash, subject to the terms of the order of May 24th, and these terms were not advertised.

Finally, it would seem from various decisions of this Court, that it would be held that the specific provisions of the third "subdivision" of Sec. 947; overrules the more general 4th "subdivision", and which last "subdivision" permits a private sale of land. And if the so-called third "subdivision" does control; then any interest in land, *if it is in the hands of a receiver*, must be sold at public sale.

But however, this may be; the irregularity of the proceedings was so great as to completely "chill" any bidding by this petitioner, despite the accumulated $30,000 or $40,000 of profits, meanwhile.

For this reason among others; petitioner made no competitive offer, under the terms of the Order Nisi; nor did anyone else.

And so, on Oct. 9th, 1944, the sale of the partnership business was finally confirmed to Respondent by the District Court.

It was from that Order Finally Confirming Sale, that petitioner's third appeal, No. 8,910 was taken.

SHORT AND SUMMARY STATEMENT OF THE SUBJECT MATTER OF APPEAL NO. 8,770.

As set out in the general statement covering the three appeals; the present appeal No. 8,770, was taken from an order of resale entered against petitioner, on March 22nd, 1944.

The important preceding events of this appeal No. 8,770 are as follows:

The business was sold to petitioner on Feb. 1st. (R. 264.) Sale confirmed to petitioner, with consent of Respondent on Feb. 9th. (R. 283.) Allegedly fraudulent demands made on petitioner, by the Receiver, February 20, to March 4th or 8th. (R. 379; R. 368-369.)

On March 10th prior to the settlement date at the close of that day, March 10th, the petitioner filed notice of appeal (R. 298) from the order confirming sale to petitioner. Since that appeal covered the same subject matter, petitioner contends that thereby the jurisdiction over the entire subject matter was transferred to thte Court of Appeals, as of the afternoon of March 10th; and that the running of the time limit against petitioner, was — apparently — stopped before the expiration of that time limit.

On March 22nd, or ten days after jurisdiction was transferred to the appellate Court, an order of resale (R. 339) was entered against petitioner.

By that order of Resale, petitioner was held in default; the $10,000 deposit was ordered returned to petitioner; and *the assets that had been sold to petitioner on Feb. 1st, were ordered resold* at petitioner's risk and cost.

It would appear that the whole theory of that order of resale, was not to set aside the sale to petitioner; but instead, to hold petitioner to the purchase; and to resell the assets as being petitioner's property; and, of course, at petitioner's risk and cost.

A more detailed statement of the subject matter of that appeal follows:

Fraudulent Character of the Receivership.

In March, 1933, all of this petitioner's property, to an estimated amount of at least $100,000; was seized through the receivership, and the entire property was then turned over to the control of Respondents, the plaintiff partner, as manager under the receiver. (R. 227.)

By that fraudulent but successful means; Respondent has not only ousted petitioner from any share of interest in the control of the partnership business; but further, plaintiff has thereby secured for himself a salary of $100 a week; and so the Respondent has by now been illegally paid more than $65,000 of the firm's funds, as a so-called salary from the receiver. (R. 224, R. 251.)

Meanwhile, during the first 10½ years of the receivership; petitioner's income was almost completely shut off; and so that—while the business is estimated to have

earned more than $300,000 during the period—and while Respondent was being paid more than $50,000, as aforesaid—petitioner was given a total allowance from his property, during that same 10½ years, of only $4,130. (R. 224.)

But, after more than 10 years, of that attempt to blackmail this petitioner, into a surrender of petitioner's interests in the partnership, to Respondent; it seemingly became apparent to Counsel for Respondent, that petitioner could not be coerced in that fashion.

And so, in 1942, after nearly 10 years of that blackmail attempt, a change was apparently made in Respondent's plan. For a scheme was then undertaken to but the partnership business up at auction sale (R. 201), but under conditions such that only Respondent could become the purchaser.

That is, it was obvious that no outsider would dare to and on the property—unless the business were being sold at an enormous sacrifice—because the business is of a highly technical agency character;

And since Respondent has been in practically complete control of the business, for the past 12½ years, as manager under the Receiver; he has had unlimited opportunity to alienate and secure practical control for himself of the vital agencies of the firm.

And if, therefore, any outsider should have ventured to purchase the property, Respondent could then have taken away the agencies, and the trained personnel, and have started up an opposition business; and could thus have left a mere wreck of the business, that, supposedly, had been sold to the purchaser. (R. 275.)

The Order for Sale

The Order for Sale, (R. 231) was obtained on motion of Respondent, (R. 201) — in accordance with the provisions of Rule 54-b of the Federal Rules of Civil Pracedure — and on the repeated assertions of Respondent, that all questions as to the rights and interest of the parties, in the assets, had been finally settled and determined, (R. 201; R. 246).

Terms of the Order of Sale.

By the terms of the Order of Sale, (R. 231-232); all assets of the partnership, of every kind, both real and personal, and including good will, and accounts receivable — and excepting only "cash on hand" — were to be sold at public sale.

It was further provided in the said Order for Sale (R. 233), that—

(a) Either partner could bid for and purchase at said sale the assets sold; and

(b) Should either partner become the purchaser, he should be entitled,
at the final settlement and payment of the purchase price,
to use and apply *toward the payment of such purchase price,*
such amount as the receiver may fairly estimate, to be his (the purchaser's) distributive interest in and to the said partnership assets.

It was also provided in the said Order for sale, (R. 233), that

The receiver is authorized and directed to continue to conduct the said business,
until the final confirmation and consummation of said sale,

accounting to the purchaser thereof,
for the proceeds of said business,
during the interval between sale and final confirmation and payment of the purchase price,
less the expenses of the conduct thereof, during such interim.

It was further provided in the said Order for sale, (R. 233), that—

Upon the final settlement of sale, the said Robert T. Creel, and Edwin J. Creel, are each hereby required and directed to join in, execute, acknowledge and deliver a conveyance of the real estate to the purchaser.

Also that—

Terms of sale to be complied with within 30 days, from the date of the final confirmation of sale.

The Sale to Petitioner.

At the public auction of Feb. 1st, 1944; Respondent bid first, $160,000. Petitioner raised Respondent's bid $500 each time; until at $240,000, Respondent dropped out. The property was then sold to petitioner, at the bid price of $240,500. (R. 328.)

Confirmation of Sale to Petitioner.

The sale was confirmed to petitioner, on Feb. 9th, on motion of the Receiver—and with the consent of Respondent. (R. 290.)

Objections of Petitioner to Form of Confirmation.

Petitioner also asked confirmation of sale. But petitioner objected to the form and manner in which the confirmation was rushed through by the receiver. (R. 268.)

Petitioner objected:

(a) That the Receiver had rushed through the hearing on confirmation, without motion and notice, as required by District Court Rules.

(b) That petitioner was given but four days notice, instead of the five required by rule.

(c) That this short notice, made the time for settlement, under the thirty day limit, to fall on March 10th, instead of on March 11th.

(d) This meant that the cash received on the day of heaviest cash receipts, March 11th, was thus not available to petitioner to apply on the purchase price. And whereas, had petitioner been given proper notice of five days; the settlement date would have fallen on March 11th; and petitioner would have an additional $10,000 or so, available from the March 11th, receipts.

Still further, had petitioner been given a normal time to consider the form of the order for confirmation, and to permit petitioner to make the motion for that confirmation; and if thereby the time for settlement, had been delayed until after the fifteenth; an additional sum of perhaps $15,000, or a total further sum of perhaps $25,000 cash would have been available, to petitioner, to apply on the purchase price of the property.

And that additional $25,000 cash might have meant the difference between petitioner's being able, or being unable, to complete the purchase within the 30 day time limit set by the order for sale.

(e) Any such attempt to "pinch" petitioner's available funds, was particularly reprehensible, because at the time the Court was holding an estimated $150,000 of petitioner's property; and which property had been

seized by the Court, only on Respondent's mere request for the appointment of a receiver.

(f) This whole hurried action was therefore an open attempt on the part of the Receiver to prevent completion of the purchase by petitioner.

Petitioner objected further to the form of the order, and to the manner, of confirmation.

And in this respect, petitioner relied on the holding by this Court in Pewabic Mining Co. vs. Mason, 145 U. S. 349; 36 L. Ed. 732, where the Court said:

> "The Chancellor will always make such provisions for notice and other conditions (of a judicial sale) as will in his judgment best protect the rights of all interested, and make the sale most profitable to all; and after a sale has once been made, *he will certainly, before confirmation, see that no wrong has been accomplished in it by the manner in which it was conducted.*"

And on this basis, petitioner objected to the manner of confirmation, (R. 290), both as to the manner in which it had ben rushed through; and also to the fact that the District Court Mr. Justice, Goldsborough, refused to include in the order of confirmation, suitable provisions that would have protected petitioner against the fraudulent demands that; in petitioner's opinion, it was obvious that the Receiver would make, and so that thereby, petitioner's right to complete the purchase would be defeated.

Variance between Order for Sale, and Order Confirming Sale.

It may be seen from the notice of service, by the receiver, (R. 268) as to the filing of his report of the sale; that petitioner was not supplied with any copy of the proposed order of confirmation.

It may further be seen, from the transcript of the hearing before Mr. Justice Goldsborough, (R. 284-298), that the confirmation of the sale to petitioner, was handled as a mere preliminary matter. And no motion for confirmation was made as required by District Court Rules, (R. 277).

It may further be seen from that obviously imperfect transcript, that the Court handled the matter of confirmation, as a mere matter of course. It may also be seen that no copy of the proposed order of confirmation, was submitted to petitioner, before it was signed by the Court.

And when that said order of confirmation was later seen by petitioner; it was then apparent that there was a grave variance, between the terms of the Order for sale, and those of the Order for confirmation.

That is, the Order for sale provided, as before set out, that on completion of the purchase, both parties were required to sign and execute a deed of the property to the purchaser. The order for confirmation, however; provided that the Receivers, instead of Respondent, was to execute the deed. And this variance, in the terms of the order of confirmation; was unacceptable to petitioner.

The fact of this variance, and of the failure of the court to include provisions for protection of petitioner against the alleged fraudulent demands of the Receiver; was later made a basis of appeal, by petitioner, against that order of confirmation.

The fraudulent false "estimate" by the Receiver.

As petitioner had expected, a still further fraudulent scheme had been planned by the Receiver, and by Respondent, and by Counsel for Respondent.

And this plan was, that should petitioner become the purchaser, at the auction; that the Receiver should then make such excessive demands as to the amount to be paid by petitioner as the balance due on the property — and over and above the credit for petitioner's admitted half interest in the partnership — that petitioner would refuse to complete the purchase, on the basis of the Receiver's said exhorbitant terms. (R. 330).

And this plan was then actually carried out. For the Receiver demanded that petitioner pay him some $62,248 more than the Receiver's own figures, (R. 369), showed to be due and payable by petitioner, on the property.

That is, the Receiver demanded, (R. 392) that petitioner pay him over again, for some $2248 of miscellaneous credits, (R. 392) insurance paid ahead and the like, that had been sold to petitioner, along with all the other assets of the business exceptng "cash on hand."

The receiver made a further illegal and fraudulent demand that petitioner should pay him an additional $60,000 in cash, to cover receivership costs, and which — the receiver said — Respondent now claimed, should be assessed against this petitioner.

Prior to the time of the supposed settlement date, the receiver refused to give any explanation of these demands; other than that $40,000 of the said amount was for receivership costs estimated to have been previously paid; while $20,000 was for receivership costs, estimated to be payable in the future.

Later, (R. 368-369) the receiver gave petitioner the further explanation that $35,000 of the said $40,000 was for costs actually paid heretofore; while $5,000 was for costs not yet paid of the former sale to petitioner. The basis

for the estimated $20,000 of future receivership costs was still not stated.

For reasons before stated, petitioner charges that there is nothing in the Order of sale which authorizes the receiver to demand; either that petitioner pay him $60,000 in cash for receivership costs which either he or Respondent "estimates" should be paid by this petitioner; nor is there any authorization for him to demand that petitioner pay him a deposit of $60,000 to cover costs of the receivership which the receiver estimates might be assessed against petitioner in the future.

But, even if there were such authorization for the Receiver to demand some such payment by petitioner; there would still be a $37,000 mistake in his figures.

And this is true, because of the $35,000 of receivership costs already paid; that entire amount has already been paid out of the partnership funds. One-half of that amount was paid out of petitioner's share in those funds; or a total of some $17,500 has already been paid of that amount by petitioner; and yet the receiver demanded the petitioner pay that $17,500 over again.

But the Receiver also demanded petitioner pay him an additional $20,000 to cover receivership costs estimated to be payable in the future.

The facts are however, that if petitioner had paid the $40,000 previously set out; and if the business had then been turned over to petitioner; the receivership would have been terminated, so far as the business is concerned; and there would have been no future receivership costs.

Petitioner charges therefore, that there was nothing in the order for sale, which authorizes the Receiver to assess

the costs of the receivership against this petitioner. Further, and such provision would have been wholly illegal and void, had it been so inserted.

But, even though the receiver might have been empowered to make such as assessment of receivership costs against this petitioner; or to require this petitioner to make a deposit with him, to cover such costs, if they should be assessed against petitioner; there would still have been a mistake of some $37,000 in his figures, and an excess of that amount in the demand which he could have made on petitioner.

Petitioner charges therefore that petitioner was not required to meet the illegal demand of the receiver; that petitioner pay either the $2,248.77 for items that had already been purchased by the petitioner in the bid price of $240,500; nor the $17,500 of receivership costs that had previously been paid by petitioner; nor the $20,000 for future receivership costs of a receivership that would have terminated had petitioner paid the $40,000 of costs previously paid; nor even the remaining $17,500 which the receiver said that Respondent claimed should be assessed against this petitioner.

And since petitioner was not required to meet any such illegal demand that petitioner pay some $62,248.79, over and above the amount which the receiver's own estimate showed to be the balance due by petitioner; Respondent was not a fault in his failure to consummate the sale under those conditions.

By the receiver's letter of March 4th, (R. 379) which transmitted the Receiver's estimate (R. 368-369) of the amount payable as balance due to the property; it was apparent that the Receiver intended to maintain his position as to the demands he had made.

On the afternoon of March 10th, therefore, and prior to the expiration of the time limit set for settlement under the order of confirmation, (R. 283), petitioner filed notice of appeal from that said order of confirmation; and thereby transferred jurisdiction of the entire subject matter to the appellate Court.

Nevertheless, on March 22nd, or ten days later; the District Court on the request of the receiver, entered its order of Resale, (R. 389) against this petitioner.

Petitioner's grounds for complaint against that Order for resale, have already been set out in part, and will be further apparent, from the statement of the Questions Presented.

On May 1st, therefore, petitioner filed his notice of appeal (R. 340) against that said order of resale. The Court is therefore respectfully referred to petitioner's statement of questions presented, for the fuller statemnt of Petitioner's objections to the said Order of Resale.

QUESTIONS PRESENTED

On March 22nd, 1944, the District Court entered its "Order for Resale" (R. 309); and which said order for resale: (a) Held petitioner in default; (b) ordered the return of the $10,000 deposit to petitioner; and (c) Directed the resale of the property at petitioner's risk and cost.

Appeal No. 8,770 was taken from that order of resale. It should therefore be observed that the requirements for an appealable order, under D. C. Code and that petitioner *must have been aggrieved thereby;* and that the said order *must*

either have been a final order; or, it must have been *an interlocutory order "whereby the possession of property is charged or affected."*

The questions presented, are in principal part:

I. Whether the Court of Appeals erred in dismissing appeal No. 8,770 as having been taken from a non-appealable order.

That is:

I-A. Whether the Court below erred in failing to hold: *that petitioner was aggrieved* by the terms of that order; that is (a) because petitioner was thereby stripped of the right to have a business earning $70,000 a year turned over to him; and (b) because the property was then to be resold at petitioner's risk and cost.

I-B. Whether the Court below erred in failing to hold: that the said order of resale *was appealable as a final order:*

(a) Under the rule of Kneeland vs. American Loan, 136 U. S. 89; 34 L. Ed. 379; that is, that a *purchaser at a judicial sale*, acquires thereby a right of appeal against any subsequent order, that adversely affects his interests; or (b) Under the Rule of Forgay vs. Conrad, 6 How. 210; 12 L. Ed. 404; that an interlocutory order is final and appealable, *if it is immediately executable;* and *if material injury could be caused* to a party thereby.

I-C. Whether the Court below erred in failing to hold, that the said order of resale was appealable, *as "an interlocutory order whereby the possession of property was changed or affected."* That is:

(a) Whether the order for the return of the $10,000 deposit to petitioner, was not a release of a lien on that $10,000, and so that thus the possession of property was affected?

(b) Whether the return of the $10,000 deposit to petitioner was not also a change in the possesssion of property?

(c) Whether that order of resale which held petitioner in default, did not strip petitioner of a valuable property right; this said right being the right to have a property earning $70,000 a year, turned over to petitioner, on payment of the purchase price?

(d) Whether the value of that right, is not shown by the fact, that the present three appeals were taken by petitioner to re-establish that right for petitioner?

(e) Whether the value of that right, is not shown by the fact that the litigation for the past 20 months, has been a contest almost exclusively over that right?

(f) Whether the value of that right, is not shown by the fact that it can be estimated that the ownership of over $130,000 of earnings of the business, that have accumulated since the date of the sale to petitioner, on Feb. 1st, 1944—will be determined by the decision as to the ownership of that right.

II. Whether the Court below erred in failing to hold:

(a) *That the said Order for Resale must be set aside and quashed:* because—by reason of the filing of the appeal by petitioner, on March 10th, (R. 298) from the or-

der confirming sale of the property to petitioner, (R. 283); all jurisdiction over the subject matter was transferred to the Court of Appeals; and so that the Order of Resale, as entered by the District Court on March 22nd, was wholly null and void; and

(b) Whether the Court below erred in failing to follow in this respect, the applicable decision of this Court in Newton vs. Consolidated Gas, 258 U. S. 177; 66 L. Ed. 548.

III. Whether the Court below erred in failing to hold that the *said Order for Resale, must be set aside and reversed* as erroneous because petitioner was not guilty of default:

(a) Because the said default of petitioner had been due solely to *illegal and fraudulent demands* made on petitioner by the receiver, as to the balance due on the property; and

(b) Because—by reason of the filing of petitioner's appeal on March 10th, (R. 298) against the order confirming the sale to petitioner; the execution of that decree of confirmation was stayed; and the running of the time limit was thus stopped, before the expiration of the time allowed petitioner for settlement; and so that no default on petitioner's part was therefore possible.

IV. Whether the Court below erred in failing to hold and direct: that since the *alleged default was not due to any fault of petitioner;* that *the sale of the partnership business to petitioner must be completed;* and that the property must be turned over to petitioner, as of the original sale date of Feb. 1, 1944; and at petitioner's bid price of $240,500; and under the terms of the original order of sale, as those terms should have been properly interpreted by the Appellate Court.

V. Whether the Court below erred in failing to hold and direct that *Respondent must account to the partnership*, for the more than *$65,000 that has been paid him as a so-called salary by the receiver*, during the 12½ years of this receivership.

VI. Whether the Court below erred in failing to hold and direct that the final terms of settlement by petitioner for the partnership property, shall be made subject to a proper accounting between the partners as to partnership affairs.

Specification of Errors to be Urged.

I. The Court below erred in dismissing appeal No. 8,770 and No. 8,823 as having been taken from non-appealable orders:

That is:

I-A The Court below erred in failing to hold that the order for resale, in appeal 8,770, meets one of the requirements for an appealable order, and that is, that petitioner was aggrieved thereby; and in that—

(a) That petitioner was stripped of a valuable property right by that said order; and

(b) That the property was ordered resold at petitioner's risk and cost.

I-B The Court below erred in failing to hold that the said order of resale, meets the second requirement for an appealable order; and that is that the said order was appealable as a final order; and in that—

(a) The said order was a final order under the rule of Kneeland vs. American Loan, 136 U. S. 89; 34 L. Ed. 379; and in that a purchaser

at a judicial sale has a right of appeal against any order that adversely affects his interests.

(b) The said order was a final order under the rule of Forgay vs. Conrad, 6 How. 210; 12 L. Ed. 404; and in that the said order was immediately executable, and could cause great injury to petitioner.

I-C The Court below erred in failing to hold that the said order of resale, meets the second requirement for an appealable order under the District of Columbia Code; and in that it is an interlocutory order whereby the possession of property is changed or affected. That is—

(a) The the said order stripped petitioner of a valuable property right.

(b) That the said order changed the possession of property, by directing the return of a $10,000 deposit to petitioner; and by holding petitioner's remaining property subject to a claim for payment of any losses resulting from the resale.

II-a The Court below erred in failing to hold that the Order for Resale must be set aside and quashed:— because, by reason of the filing of petitioner's appeal of March 10th, 1944; and which covered the same subject matter—the District Court had no jurisdiction over the subject matter to enter that said order of resale.

II-b The Court below erred in failing to follow the applicable decision of Newton vs. Consolidated Gas, 258 U. S. 177; 66 L. Ed. 548; that is, that the filing

of a valid appeal, transfers jurisdiction over the subject to the Appellate Court.

III. The Court below erred in failing to hold that the said order for resale; must be set aside and reversed, because petitioner was not guilty of blamable default, in refusing to complete the settlement under the terms demanded by the Receiver. That is

III-A That where petitioner had purchased all the assets of the partnership, except cash on hand, the receiver had no authority to demand that petitioner must pay additionally for miscellaneous credits of the partnership, and such as insurance paid ahead and the like.

III-B That where the order of sale recites that all questions as to the rights and interest of the partners, in the assets, had been finally determined; the Receiver was not authorized to require that petitioner must pay to the Receiver, $60,000 to cover costs of the Receivership; when no such claim against petitioner had been determined by the Court.

III-C That where $35,000 of Receivership costs had been paid from partnership funds—and of which $17,500 had been paid from petitioner's share of the said fund; the Receiver was not authorized to require that petitioner should pay the receiver over again for that said $17,500.

III-b The Court below erred in failing to hold: that the filing of petitioner's appeal of March 10th, against the order confirming sale; stopped the execution of that order; and so stopped the run-

ning of the time limit against petitioner, before the expiration of said time limit; and so that petitioner could not be guilty thereafter of default.

IV. The Court below erred in failing to hold and direct; that since the alleged default by petitioner was not due to any fault of petitioner; that the sale of the partnership business to petitioner must, therefore be completed; and that the partnership business must be turned over to petitioner, under the terms of the original order of sale; and as of the original sale date, Feb. 1st, 1944.

V. The Court below erred in failing to hold and direct that Respondent must account to the partnership for the more than $65,000 that has been paid Respondent, as a so-called salary by the receiver, during the 12½ years of the receivership.

VI. The Court below erred in failing to hold and direct, that the final terms of settlement by petitioner, for the partnership property, should be made subject to a proper accounting between the partners, as to partnership affairs.

Reaons Relief on for the Allowance of the Writ:

I. By Dismissing appeal No. 8,770 as having been taken from a non-appealable order, the Court below has in effect:

A. ruler that a purchaser at a judicial sale has no right of appeal, against a subsequent adverse order affecting his interests, and this is contrary to the applicable ruling of this Court, in Kneeland v. American Loan and Trust Co., 136 U. S. 89; 34 L. Ed. 379.

B. Ruled that a party to a suit has no right to appeal from an interlocutory order, which is immediately executable, as in this case; and where it might cause irreparable injury to the party affected adversely thereby; and that holding is directly in conflict with the principle laid down by this Court in Forgay vs. Conrad, 6 How. 210; 12 L. Ed. 379.

C. Followed the obsolete rule of Butterfield vs. Usher, that an order setting aside a sale and ordering a resale is not appealable; and this is directly in conflict with the principle enunciated by this Court, in Kneeland vs. American Loan and Trust Co., 136 U. S. 89; 34 L. Ed. 379.

Respectfully submitted,

EDWIN J. CREEL.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.

Nos. 587-588-589.

EDWIN J. CREEL, *Petitioner,*

v.

ROBERT T. CREEL, *Respondent.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

OPINION BELOW.

The opinion of the United States Court of Appeals for the District of Columbia is reported in 149 Federal Reporter 2nd Series 830.

JURISDICTION.

The order of the United States Court of Appeals for the District of Columbia was entered May 21, 1945. The jurisdiction of this Court is invoked by Petitioner under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1935.

SUMMARY STATEMENT OF FACTS.

This is an application for certiorari to review an order of the United States Court of Appeals for the District of Columbia dismissing two appeals therein numbered 8770 and 8823 and in 8910 affirming the judgment of the District Court of the United States for the District of Columbia confirming an order of sale to respondent of certain partnership assets, formerly owned by a copartnership, consisting of the petitioner and respondent.

The facts leading up to the sale of said partnership assets are as follows:

On February 27, 1933, nearly thirteen years ago, respondent filed his suit for dissolution of partnership and the appointment of a receiver. On March 20, 1933, the District Court entered an order appointing a receiver. Although the District Court appointed as Receiver, E. Quincy Smith, the same person whom the petitioner suggested should be appointed as arbitrator, the petitioner vigorously opposed the signing of said order and immediately appealed therefrom to the United States Court of Appeals for the District of Columbia which affirmed the order. He then applied to this Court for a writ of certiorari, which was denied (294 U. S. 723, 79 L. Ed. 1255). The opinion of the United States Court of Appeals for the District of Columbia is reported in 63 App. D. C. 384, 73 F. (2)107, and contains a full statement of the basic facts up to that time.

By its order of January 24, 1935, the District Court, at the suggestion of the petitioner, appointed Erskine Gordon Receiver of the assets of the partnership in place of E. Quincy Smith, who had died prior to said date. Erskine Gordon qualified as such Receiver on January 25, 1935, and since said time has been actively engaged in carrying on the said business.

Subsequently, in June, 1936, the District Court ordered the partnership dissolved (R. 70). At this hearing the petitioner contended that he had large and sundry claims

against the business, in addition to his claim as owner of a one-half interest in the partnership assets (R. 245). The Court, therefore, instead of authorizing the Receiver to sell the business at that time, referred the matter to the Auditor for the specific purpose of determining the respective interests of the partners in the assets of the partnership. On January 18, 1939, the Auditor, after devoting 46-1/2 days to a hearing on the reference, in which thirty-seven volumes of testimony were taken, filed his report (R. 71), in which he denied all of petitioner's ten claims of allowances for alleged damages or superior capital contribution. This report was confirmed by the District Court on June 2, 1939 (R. 178). Petitioner appealed from the order of confirmation to the United States Court of Appeals for the District of Columbia, which allowed him nine extensions of time in which to file his record and brief. Upon his failure to file his brief, that Court dismissed his appeal in October, 1941.

Thereafter, in August, 1942, the District Court ordered the sale of the partnership assets (R. 231), from which order petitioner noted his appeal to the United States Court of Appeals for the District of Columbia. In June, 1943, that Court issued an order which required the appeal to stand dismissed unless petitioner filed the complete record on appeal by July 1, 1943. Petitioner thereafter filed his motion for a rehearing and modification of this order but, on October 18, 1943, the Court adhered to its previous order, the effect of which was to dismiss the appeal from the order of sale.

Thereafter, on February 1, 1944, the assets of the partnership were finally offered for sale by the Receiver at public auction. There were only two bidders: the respondent, who bid $240,000.00, and the petitioner, who bid $240,500.00. The assets were accordingly knocked down to petitioner on his high bid of $240,500.00, and he deposited with his bid, his check of $10,000.00 (R. 264). Immediately thereafter, the sale to petitioner was, *with the consent of*

respondent, confirmed by the Court (R. 283). Petitioner appealed to the United States Court of Appeals for the District of Columbia from this order confirming the sale to him on his own bid, which appeal was subsequently dismissed by that Court on May 12, 1944.

The Petitioner failed to comply with the terms of sale (R. 305), whereupon the District Court passed an order March 22, 1944, holding petitioner in default and ordering a resale of the property at public auction at the risk and cost of petitioner (R. 339), upon which order petitioner's appeal, No. 8770, is based.

At the resale, Petitioner and Respondent were again the only bidders. Petitioner bid $235,000.00. Respondent bid $220,632.48, the exact amount of appraisal of the assets as of December 31, 1943 (R. 344). Thereupon the Receiver accepted deposits of $10,000.00 from each of the bidders, with the understanding that he would submit both bids to the Court and request instructions as to what action he should take in relation thereto (See Receiver's report—R. 344). At the hearing at which the two bids were submitted, the Court in its order (R. 466) rejected both bids and ordered the return of the deposits, which were accepted by each of the parties. The order also gave the Petitioner the right to purchase the assets for the sum of $240,500.00, the amount of his bid at the first sale; but further provided that if he failed to avail himself of this right within thirty days, that Respondent should have the right or option to purchase the assets for the sum of $240,000.00, the amount of his bid at the first sale. The Petitioner's second appeal, No. 8823, is based on this order.

Petitioner failed to exercise his right to purchase the assets for the sum of $240,500.00, and thereupon Respondent notified the Receiver that he desired to purchase the assets for the sum of $240,000.00, and made a deposit with him of $10,000.00, which offer was accepted by the Receiver, subject to confirmation by the Court (See Receiver's report—R. 471). Thereafter the Court appointed appraisers (R. 496), who made a formal appraisal of the

property, the prior appraisal having been made by appraisers appointed by the Receiver and not by the Court. These official appraisers appraised the value of assets at $219,743.88 as of May 1, 1944 (R. 497), whereas the earlier appraisal valued the property at $220,632.48 as of December 31, 1943. Thereafter, on August 30, 1944, the Court passed an Order Nisi (R. 498), giving notice that the acceptance of the Respondent's bid of $240,000.00 would be ratified and confirmed unless cause to the contrary was shown or a higher bid made by the 9th day of October, 1944, at ten o'clock A.M., at which time higher offers would be considered and objections heard, and required publication of that order ten days before time for final ratification as required by law, which provision was complied with by the Receiver. Neither Petitioner nor anyone else made any higher offer or offered any valid objection why the offer of Respondent, which was nearly ten percent above the appraised value of the property, should not be ratified and confirmed. Consequently, the Court ratified and confirmed the sale (R. 524). It is from this order of confirmation that Petitioner bases his third appeal, No. 8910.

The United States Court of Appeals for the District of Columbia ordered the three cases consolidated for hearing. Before the hearing in said Court, Respondent filed two separate motions for dismissal of Petitioner's two appeals numbered 8770 and 8823 (R. 821-862). Action on the motions to dismiss were delayed until the final hearing. After the final hearing, the United States Court of Appeals, by its order of May 21, 1945, granted Respondent's motions to dismiss the appeals Nos. 8770 and 8823, and affirmed the judgment of the District Court in No. 8910, confirming the sale of the partnership assets to Respondent (R. 912-13).

THE QUESTIONS PRESENTED.

It is very difficult to determine precisely what questions the petitioner desires to raise in this Court. He has abandoned some questions which he urged in the United States Court

of Appeals for the District of Columbia *and raises some new ones which he did not even suggest in said Court.*

It would appear from his petition (pages 23 to 26 inclu.) that he has the following questions in mind:

(1) That at the time each of the orders was signed by the District Court, there was pending in the Court of Appeals, an appeal from a prior order and, consequently, the lower Court had no jurisdiction to pass any of the orders of which he complained.

(2) That petitioner's default under the order, confirming the sale to him, was due solely to the illegal and fraudulent demands made upon him by the Receiver.

(3) That the Court below erred in failing to hold and direct that Respondent must account to the partnership for more than $65,000.00 that has been paid him as a salary by the Receiver, during the 12-1/2 years of Receivership.

(4) That the Court below erred in failing to hold and direct that before Petitioner could have been required to make settlement under his bid a further accounting should have been had between the partners as to partnership affairs.

ARGUMENT.

1. The first question raised by Petitioner seems to be the one on which he chiefly relied. He was always of the opinion that by noting an appeal from any order of the District Court, even though in his favor (like the one confirming the sale to him), he could oust the District Court of jurisdiction pending the disposition of his successive appeals and thus prolong the litigation endlessly. In his petition for certiorari (p. 8) Petitioner says: "On June 23rd, therefore, and for the purpose of blocking the obvious intended sale to Respondent, Petitioner filed notice of his second appeal No. 8823 . . . "

His first two appeals did not "block" the sale or oust the lower Court of jurisdiction for the following reasons:

(a) The first two orders were not final orders as they

required confirmation. *As long as confirmation is required in an order of sale or resale, that order is not a final order.* It is only an order confirming a sale that is appealable. (See D. C. Code 1940) Sec. 17-101; Butterfield v. Usher, 91 U. S. 246, 248; Dikeman v. Jewel Gold Mining Co., 9 Cir., 2 F. (2d) 665; The St. Paul, 262 F. 1021 cert. denied. 252 U. S. 578; King v. Harrington, 35 App. D. C. 111, 115.

(b) The Petitioner was not aggrieved by any of the three orders from which he apealed. The first order, ordering a resale did not prohibit him from bidding at the resale, even though he defaulted on his own bid at the first sale. As a matter of fact, *he did bid at the resale,* but the Court would not accept his bid because it was less than his defaulted bid. The second order gave him the *first* right to purchase the assets *at the figure he had originally bid.* How could he possibly be aggrieved by that order, which again gave him the right to purchase at his own figure, several months after he had defaulted on the same bid? Neither of these first two appeals *had any* merit on the facts and consequently, the final order of confirmation in no way injured Petitioner (See Williams vs. Linville 70 P. (2d) 485, 9 Col (2d) 256). So far as the third order complained of is concerned, the price at which the sale was confirmed to ~~Petitioner~~ was nearly ten percent above the appraised value. Petitioner did not question the adequacy of the price because it is the figure he himself named and twice refused to purchase thereat. Consequently, he was not in any way aggrieved by this order of confirmation.

(c) The Petitioner waived his right to and abandoned his prior appeals by accepting the benefits under the orders appealed from inconsistent with his appeals. In compliance and acquiescence with the provisions of the order of resale, Petitioner accepted a return of his deposit which he made when the property was knocked down to him at the first sale. He then appealed from the order of resale. At that time, there was also pending in the Court of Appeals his appeal from the order confirming the sale to him. *Not-*

withstanding the fact that these two appeals were pending, the Petitioner attended the resale and endeavored to purchase the property offered for sale by bidding therefor, an action entirely inconsistent with the two appeals noted by him before the resale. His action indicated that both of his appeals were abandoned and that the order of resale was a valid, effective order, under which the Petitioner was willing to and would take title if his bid was accepted.

The District Court did not accept his offer, but passed the order which directed the return of the deposits made by both Petitioner and Respondent and gave Petitioner the first right to purchase at his original higher bid. Petitioner accepted the return of his deposit and then noted his appeal from this order. (See *Harris* v. *Harris*, 67 App. D. C. 85, 89 F. (2d) 829; *Mathis* v. *Litteral*, 175 S. W. Rep. 398, 117 Ark 481; *Bolen* v. *Cumby*, et al, 53 Ark 514, 14 S. W. 926; *Albright, et al* v. *Oyster, et al*, 60 Fed. 644, 9 C. C. A. 173.)

(d) The District Court at all times retained jurisdiction over the partnership assets and was justified in passing the orders complained of *as they were necessary for the protection and preservation of the assets and the business.* (See *Bronson* v. *La Crosse Railroad Co.*, 1 Wall 405, 410, 68 U. S. 405). The Receiver urged the necessity of immediate action, contending that delay might result in irreparable loss to and depreciation of the assets and good will. In this report filed in the District Court on March 11, 1944, reporting the default of the Petitioner in consummating the purchase at the sale of February 1, 1944, he said (R. 305-307-308):

> "8. This receiver urges the necessity of some immediate action for the following reasons: The business conducted by this receiver employs some forty-five employees, most of whom are specially trained and many of whom have been employed by this firm for periods ranging from five to twenty years and are thoroughly conversant with the details and technical operations of the business. Since the said sale a large number of them, anticipating a change of ownership and manage-

ment, have asked for their releases from employment by this receiver, and it is only at the urgent request of this receiver that they have remained in such employment, inasmuch as such experienced employees could immediately obtain employment in other plants and enterprises of a similar character and probably at a higher compensation.

"The business of Creel Brothers is principally an automotive service business and its continued operation as such depends on the good will of the various manufacturers and suppliers with whom we have contracts and agreements. Practically all of these contracts and agreements are terminable at will or on 30 days' notice. A number of these manufacturers and suppliers have, since said sale, become uneasy and are apparently uncertain as to the manner in which the operation of the business will be continued. It is, therefore, especially important that the sale of the business be settled before any of our major suppliers transfer their accounts elsewhere. Delay in settlement may result in irreparable loss to and depreciation of the assets and good will."

The employees were cognizant of the bitter litigation between the parties. Men experienced and trained in the special technical work of the business, anticipating a change in ownership and management, and uncertain as to their employment or employer, were becoming uneasy, asking to be released, and threatening to leave. Manufacturers, distributors and suppliers, for the sale of whose products the partnership had been agents and which agencies were terminable at will or on short time notice, were becoming uncertain in relation to the future conduct thereof, and the Receiver was faced with the loss of these agencies and their transfer to other concerns, competitors of the firm.

Here was the threat and danger of both waste and loss; the total disruption of the business as a going concern.

The value of the business and the price to be obtained for it centered in the fact of it being a going concern.

Sale as a going concern was the only method by which its full value could be realized.

It was imperative that it be maintained and sold as a going concern.

Its value lay in the purchaser obtaining a going business. The agencies, one of the most valuable items of assets, terminable at the option of the manufacturers, distributors and suppliers, would have gone into other hands. If the Receiver could succeed in maintaining the business in status quo pending a sale, disaster and consequent waste and loss could be avoided, but immediate sale was the only reasonable and practical solution under the surrounding conditions.

With the loss of trained employees and agencies, or either of them, the good will of the business, another valuable asset, was in danger of being destroyed and lost.

The "agencies" were one of the most valuable assets of this partnership. The Petitioner recognized this for in his answer, filed March 17, 1933, he says (R 24):

> "1. Defendant further avers, that the business is almost exclusively an agency business for the various automotive lines carried; that these various agencies are generally in demand by the firm's competitors, and that, if a Receiver is appointed, it is probable that many valuable agencies would be taken over by competitors, and that thus not only would the individual stocks, *but also the going value of the business as a whole be immensely depreciated, or perhaps even totally ruined.*"
>
> (See also Petitioner's affidavit (R 47-48)).

2. The second question raised by the Petitioner is also without merit. He claims that his default under the order confirming the sale to him was due solely to the illegal and fraudulent demands made upon him by the Receiver. There is no proof whatsoever of this claim. The verified report of the Receiver (R 306-307), the accuracy of which has never been questioned, shows conclusively that Petitioner never had any intention of completing his purchase. He made no tender of the reduced amount he claimed was due or a tender of any kind. The Original order of sale pro-

vided that if either of the parties purchased the assets, he should be entitled at the final settlement and payment of the purchase price to use and apply towards the payment of such price such amount as the Receiver may fairly estimate to be his distributive interest in and to the said partnership assets. It was the Receiver's duty to allow Petitioner only such credit as would leave a sufficient balance to protect him (Receiver) in the final settlement. The amount of cash to be advanced under this mode of settlement was not final. The exact and final calculations would have been made on the final hearing on distribution of the fund. Even though the Receiver would not allow the Petitioner a credit in the amount to which Petitioner thought he was entitled, he lost nothing thereby, for any portion of his share that remained in Receiver's possession would be paid him at the final accounting. The petitioner's claims regarding the prepaid items have no merit. He knew that the Receiver was not selling the large amount of cash in bank or the prepaid items and has never alleged that at the time he made his bid he actually believed these items were included. Furthermore, if there was any sincerity in his claims respecting the cash and prepaid items, he could have reserved his rights by making payment under protest and had that matter settled at the final accounting, before the Auditor. In any event, it is rather a late date for Petitioner to make claims regarding the original sale to him—*after accepting a return of his deposit, and then bidding at the subsequent resale.*

3. The third question raised by Petitioner that the Respondent was not entitled to any compensation for working for the Receiver is one he carefully refrained from raising in his last appeal to the United States Court of Appeals for the District of Columbia. This question was first raised by the Petitioner in the hearings before the Auditor, where he claimed the Respondent was wrongfully paid $17,300.00 up to that time as salary for services rendered the Receiver. (He has increased his claim to $65,000.00 as Respondent

continued to work for Receiver). After hearing testimony on Petitioner's claim (R 142 to 148 Incl.), the Auditor found that the services performed by Respondent "were fairly and reasonably worth the amount of salary paid to him for said services by said Receiver," that the Petitioner "was justly entitled to said salary, and that to require him to return said salary, or any part thereof, would be inequitable and unfair." This report of the Auditor was duly confirmed by the trial Court. Later, in one of his many appeals to the United States Court of Appeals for the District of Columbia (No. 8465), that Court in dismissing said appeal said:

> "We have examined the two grounds of his present appeal. The first is that the Court erred in permitting the Receiver to employ Petitioner's brother in the operation of the business and in allowing him a salary of $100.00 per week. The objection to this employment does not question the brother's qualifications, but is laid on the theory that, because the brother had a half interest in the partnership, he could not legally be employed in the operation of the business. . . . The first may be raised on the subsequent order of distribution of the fund . . . ."

Apparently Petitioner did not raise this question in his last appeal to the Court of Appeals, but reserved it for contemplated appeals from the final order of distribution of the fund. However, for some unaccountable reason, he now raises it in his petition for certiorari. A perusal of the testimony before the Auditor (R. 142 to 148 Incl.) shows that this claim has no legal or moral validity.

4. The Petitioner's fourth question *has never been raised before.* Apparently his new idea is that a new reference should have been made to the Auditor of the District Court before he was required to make settlement under his first bid. The order of sale, from which his appeal to the United States Court of Appeals for the District of Columbia was dismissed, did not provide for such procedure, nor did the petitioner at any time attempt to have said order of sale

changed in this manner. As pointed out in the argument under Petitioner's second question, any objections he had in reference to the Receiver's figures of settlement could have been raised in the final account for the distribution of the fund.

The above covers the four questions specifically raised by Petitioner under the caption of "The questions presented are in the principal part," in his petition (pages 23 to 26 Incl.). However, scattered throughout the petition, Petitioner raises other questions, some of which will be touched upon briefly.

On page 8 of his petition, he claims that it was physically impossible to identify the assets sold to Respondent. This is not true. The assets were appraised by Court Appraisers. The Respondent purchased all of the merchandise on hand as of May 1, 1944. Receiver will have to account to Respondent for all merchandise sold or purchased after that date, for he was and is operating the business for Respondent after said date (R. 233). There will be no difficulty about the final settlement, and the Petitioner will receive what he is entitled to. If he is dissatisfied, he can raise his objections to the final account or order of distribution of the fund. He complains that this alleged uncertainty "chilled" the bidding—another new claim, but nowhere in these proceedings has he ever claimed the sale price was inadequate.

Petitioner also raises *another new question not heretofore raised in the District Court or in the Court of Appeals:* that Section 847 (erroneously referred to as 947) of the United States Code prohibits a sale of real estate at a private sale.

It is a general rule that questions not raised on the trial or presented to the court below for decision cannot be entertained here.

Says the Court in *Robinson & Co.* v. *Belt*, 187 U. S. 41, 50:

> "No objection seems to have been raised in that court to the form of the judgment. In the assignments of error in the United States Court of Appeals for the Eighth Circuit no such question is raised and none

alluded to in the opinion. Such objections could not be raised for the first time in this court. Insurance Co. v. Mordecai, 22 How. 111, 117; National Bank v. Commonwealth, 9 Wall. 353; Wheeler v. Sedgwick, 94 U. S. 1; Wilson v. McNamee, 102 U. S. 572; Edwards v. Elliott, 21 Wall 532; Clark v. Fredericks, 105 U. S. 4."

In *Clark* v. *Fredericks*, 105 U. S. 4, 5:

> "The matter referred to in the second assignment does not seem to have been brought to the attention of either of the courts below, and the objection now made comes too late in this court for the first time. * * * *There is nothing in all this very confused record to indicate that the point was ever made until the brief for the plaintiffs in error was filed here.*" (Italics ours.)

See further the opinion of the Court in *Gila Valley, etc.*, v. *Hall*, 232 U. S. 94, 98; *Magruder* v. *Drury*, 235 U. S. 106, 112, 113.

The authorities in support of the aforegoing proposition are too numerous to be cited.

Petitioner cites no cases in support of his new proposition that Section 847 of the United States Code prohibits a sale of real estate at a private sale, nor indeed can any such cases be found. Furthermore, the sale was a continuation of the second sale at public auction, held on May 1, 1944 under the order of resale of March 22, 1944. At that sale, a controversy arose between the only two bidders (Petitioner and Respondent) as to which bid should be accepted. At the hearing on the Receiver's report of the circumstances giving rise to such controversy, the Court rejected both bids and stated the terms on which the bidder could purchase. This was but a continuation of the public sale. However, as a precaution the Court also took the other steps, to wit, of requiring an appraisement and publication of the Order Nisi (R 498), which fully protected the right of the Petitioner to purchase before confirming the sale to Respondent. That right he failed and refused to exercise.

Petitioner in his petition (p. 18) contends that there was a variance between the order of sale and the order of con-

firmation, because the order of sale provided that both parties to the action were to sign and execute a deed of the property to the purchaser; whereas the order of confirmation provided that Receiver was to execute the deed. He says that this "variance" was unacceptable to him, but he does not say he ever objected to it. What difference does it make who executes the deed as long as the purchaser accepts title and pays the purchase price?

REASONS WHY WRITS SHOULD NOT BE ALLOWED.

The orders appealed from do not involve a question of general importance; nor a question of substance relating to the construction or application of the Constitution or a Treaty or Statute of the United States; nor does the Petitioner claim that they do. His only claim is that, in Appeal No. 8770, the Court in effect ruled (1) "that a purchaser at a judicial sale has no right of appeal against a subsequent adverse order, affecting his interest," and (2) "that a party to a suit has no right to appeal from an interlocutory order, which is immediately executable or where it might cause irreparable injury to the party affected thereby" and (3) "setting aside a sale and ordering a resale is not appealable and that this alleged ruling is contrary and directly in conflict with the cases of *Kneeland* v. *American Loan & Trust Co.*, 136 U. S. 89, 34 L. Ed. 379 and *Forgay* v. *Conrad*, 6 How 201, 16 U. S. 653, 12 L. Ed 404, 12 L. Ed. 379.

The Court did not "in effect" make any of the above rulings nor are the two cases cited by Petitioner "contrary" or "directly in conflict" with the Court's order. The only thing that the Court held with respect to this particular appeal No. 8770 is that the specific order, ordering a resale, was not an appealable order. In this, it was not in error. As already set forth in our argument, this order (1) was not a final order, (2) the petitioner was not aggrieved thereby (3) that he abandoned this appeal by accepting a return of his deposit and bidding at the subsequent sale, and (4) that the District Court was justified in passing the

order of resale to preserve the assets held by the Receiver.

The two cases relied on by Petitioner do not sustain his position. The *Kneeland case* does not deal with an order of resale at all. It simply permits the purchaser at a foreclosure sale to appeal from an order of confirmation where the order itself reserved to the purchaser "the right to appeal from any orders and final decrees made by the Court directing and decreeing the payment of claims and debts found and determined . . ." The *Forgay case* likewise does not deal with an order of resale at all, but from a decree which "not only decides the title to the property in dispute, and annuls the deeds under which the defendants claim, but also directs the property in dispute to be delivered to the complainant, and awards execution."

The Petitioner has no specific question he wishes to raise before this Court. He desires a general review of the whole litigation, which has been pending before the Courts for nearly thirteen years. That is why he has filed a record of 929 pages—most of which is entirely irrelevant to the legal issues he specifically raises. On page 5 of his petition he says, "Certiorari is sought . . . for general review and correction of an alleged abuse of receivership." Almost from the beginning of this case, he has charged nearly everyone connected with it with fraud and corruption and threatened them with criminal prosecution. He demanded "impeachment and criminal prosecution of at least five Justices," of the District Court on the grounds "that they have wilfully and knowingly aided and abetted the criminal abuse of this receivership" and the "peremptory statutory disqualification of all the remaining Justices of the Court" (R. 235). But he has failed to prove any of his charges in these proceedings.

Certain facts of the case stand out in bold relief: The Petitioner was, by an indulgent District Court, twice given the opportunity to purchase the assets of the former partnership at the figure he himself had offered, but when he failed and refused to do so, it gave the respondent the right to purchase them at practically the same figure, which is

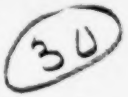
nearly ten percent above the Court appraisal. It is obvious that Petitioner does not wish to purchase the assets or permit his brother to do so—he wants to keep the receivership in perpetual operation and have the Respondent work for the Receiver without compensation.

CONCLUSION.

Respondent respectfully submits that the Petitioner has shown no valid reason whatsoever why a writ of certiorari should be granted in any of the three appeals. The Court of Appeals examined the voluminous record and found no error therein. The Petitioner's charges of fraud and corruption are not supported by the record. In short, there is no valid reason why this Honorable Court should permit the Petitioner to endlessly carry on his bitter private vendetta. Respondent, therefore, submits that the Petitioner's application for writs of certiorari should be denied.

Respectfully submitted,

LEON TOBRINER,
SELIG C. BREZ,
Attorneys for Respondent.



IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

Nos. 587, 588, 589.

EDWIN J. CREEL
Petitioner

vs.

ROBERT T. CREEL
Respondent

MOTION FOR PERMISSION TO FILE A SUBSTITUTE PETITION

EDWIN J. CREEL,
in proper person.

IN THE

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Respondent

MOTION FOR PERMISSION TO FILE A SUBSTITUTE PETITION

To the Honorable, The Chief Justice and the Associate Justices of the Supreme Court of the United States:

Comes now the Petitioner, Edwin J. Creel, and respectfully prays:

That Petitioner be granted permission to substitute a corrected and revised copy of Petitioner's present Petition for Writ of Certiorari, in lieu of the original petition that was filed in this Court on November 5th, 1945.

Grounds for Motion.

As grounds for the Motion, Petitioner respectfully shows to the Court:

1. That the petition now on file in the Court, in this cause is incomplete, and badly in need of correction and of revision.

2. The defects in that said petition are due to several causes; but principally to the fact; that certain of Petitioner's inventions, and certain of Petitioner's scientific discoveries; now appear to be of immense importance to the National Reconversion and post-war programs.

3. One of Petitioner's said inventions is what might be described as a "low-friction surfacing" for ship hulls. It is believed to be an all but assured certainty, that this said invention can produce an increase in speed of probably 50%, in ships generally, without any increase in the power supply. There is however a minor doubt remaining, as to how well this surfacing will stand up in practice.

4. On the sudden collapse of Japan, early last August; it was apparent that this Nation would face a serious reconversion, and post-war problem, because of the great bulk of excess merchant shipping.

Under these conditions, and because of the apparent importance of the said shipping invention, to the solution of said problem; Petitioner considered it necessary to give his first attention, to an attempt to make that said invention available, as quickly as possible, to the various governmental shipping agencies.

5. Because of time given by Petitioner, to that work; it became necessary for Petitioner to ask for a 30 day extension of time to file his petition for certiorari in this case.

6. With further disclosures of the claims made for the atomic bomb; it became apparent that that said shipping invention might be of even greater importance, as a means of giving

more adequate pretoction to our naval vessels, against the atomic bomb.

7. With this added complication; it became necessary for petitioner to ask for a second 30 day extension to file his said petition. Then, in a last attempt to get that said invention out ahead of the petition in this case; Petitioner cut his time too short for preparation of his petitions in this cause.

8. As part of the alleged fraud in this case; Petitioner's main appeal 8,770 was held up in the Court of Appeals, until a third appeal, No. 8,910 could be tied in with the first.

Then with three heavy appeals, thus tied together; the Court of Appeals issued no opinion in the case; but instead merely dismissed two appeals as having ben taken from non-appealable orders. The aforesaid third appeal was affirmed, on the ground that no error was found in the record.

This placed an impossible burden on Petitioner. For it is impossible to meet all the possible reasons which might have been seized on by the Court of Appeals, as a basis for its decision.

Petitioner thus had no idea whether it was claimed that the sale to Respondent, was a public or a private sale; or whether the Respondent was supposed to have bought the partnership business, as an entirety, as of May 1st, 1944; or whether instead, he was supposed to have bought, on May 1st, the assets that had been sold to Petitioner on Feb. 1st, 1944.

10. With the filing of Respondent's reply brief on Nov. 29th, the issues; in the case were partly clarified. For it was then made apparent, that Respondent claimed to have bought the partnership property as a "continuation" of a public sale; and further, that he claimed to have bought the "assets" of the partnership as of May 1st; and not as of Feb. 1st.

11. Had these admissions, or claims been made clear at the start, it would have been possible for petitioner to write an adequate petition, at least as against the confirmation of the sale

to Respondent. But without those limiting admissions; it was impossible to write any adequate account of the subject matter, within the allowable limits of a petition for certiorari.

12. Petitioner had planned on filing three separate petitions in the case. Because of time given to the reconversion matter, however; and because it was impossible for Petitioner to know what issues he had to meet in the case; Petitioner found it impossible to prepare the three petitions within the remaining time.

13. Petitioner then tried to prepare two petitions to cover the three appeals. And when that proved impossible, because of the shortness of the remaining time; Petitioner was then compelled to rewrite his single petition, to attempt to make it partly cover all three appeals.

14. Finally, Petitioner was unable to complete even that single petition properly, because of the many changes in plan. The petition as filed was then a not fully corrected copy. Petitioner then had a further 50 copies run off, and served both the original and the corrected copy on Counsel for Respondent, on November 15th.

15. Petitioner then asked Counsel for Respondent, to consent to the substitution of the corrected copy, for the uncorrected one that is on file, Counsel refused his consent to that substitution. And Counsel then further in his brief viciously misquoted Petitioner's statement of legal principles.

16. The attention of the Court is requested to the inexcusable false statement, in Counsel's brief; that Petitioner claimed that Sec. 847, Title 28, U. S. C. prohibits the sale of real estate at private sale.

What Petitioner had really claimed, on page 10 of Petitioner's brief, as filed, was that the 4th general "subdivision" of Sec. 847, which permits a private sale of real estate; was apparently overruled by the more specific "2nd sub-division" which requires that any interest in land, that is *in the hands of a receiver, at the* time it is offered for sale, must be sold at public sale.

Under those conditions, and since the Brief of Counsel for Respondent, is a veritable maze of falsification; Petitioner desired to file a revised and amended petition, instead of a mere corrected copy of the original.

Petitioner therefore asked a delay in consideration until Dec. 21st, to permit Petitioner to adequately reply to the Respondent's misstatements and misrepresentations; and to meet the new issues raised in Respondent's brief.

Petitioner was advised that the Court would consider the case on December 15. And in that additional week's time, Petitioner has been unable to prepare both his reply brief, and his amended petition. Petitioner now therefore requests permission to file his ~~said~~ revised petition, copies of which are submitted with this motion.

Respectfully submitted,

EDWIN J. CREEL.

(3D)

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

Nos. 587, 588, 589.

EDWIN J. CREEL
Petitioner

vs.

ROBERT T. CREEL
Respondent

PETITION OF EDWIN J. CREEL, FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA. FOR REVIEW OF DECISIONS OF THAT COURT DISMISSING APPEALS NOS. 8,770 AND 8,823 AND AFFIRMING IN NO. 8,910.

EDWIN J. CREEL,
in proper person.

INDEX

CASES CITED

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945.

Nos. 587, 588, 589.

EDWIN J. CREEL

Petitioner

vs.

ROBERT T. CREEL

Respondent

PETITION FOR WRITS OF CERTIORARI FOR REVIEW OF DECISIONS DISMISSING APPEALS NOS. 8,770 AND 8,823 AND AFFIRMING IN NO. 8,910.

To the Honorable, The Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, Edwin J. Creel, prays that three writs of Certiorari issue to the United States Court of Appeals for the District of Columbia, to review various portions of a judgment entered in the above entitled cause on May 21, 1944; and which said portions of said judgment decreed dismissal of petitioner's Appeals No. 8,770 and No. 8,823, and which further entered an affirmance in No. 8,910.

Jurisdiction.

The judgment complained of (R. 913) was entered as to all three appeals on May 21, 1945. A timely motion for rehearing was filed on June 5th (R. 914). Motion for rehearing denied June 6th, (R. 922).

On September 5th, petitioner was granted an extension of time to October 6th for filing petitions for certiorari, (R. 929). On October 5th petitioner was granted a further extension of time to November 5th, for filing petitions for certiorari, (R. 929).

Jurisdiction rests on Sec. 240 (a) of the Judicial Code as amended by Act of February 13, 1925.

Statute Involved.

Sec. 101, Title 17, of the District of Columbia Code, 1940; is of special importance as to the two dismissed appeals Nos. 8,770 and 8,823; because of the unusual jurisdiction, that is given the United States Court of Appeals for the District of Columbia, as to appeals from interlocutory orders.

The relevant portions of that Section are as follows:

> "*Any party aggrieved by any final order, judgment, or decree* of the District Court of the United States for the District of Columbia, or any Justice thereof, may appeal therefrom to the said Court of Appeals.
>
> *Appeals shall also be allowed* to said Court of Appeals *from all interlocutory orders* of the District Court * * * *whereby the possession of property is changed or affected,* such as orders for the appointment of receivers, granting injunctions, dissolving writs of attachment, and the like." (Italics added.)

Federal Rule Involved.

Rule 54-b. Federal Rules of Civil Procedure.

"Judgment at various stages. *When more than one claim for relief is presented in an action,* the court at any stage, *upon a determination of the issues material to a particular claim, and all counterclaims arising out of the transaction* or occurence which is the subject matter of the claim, *may enter a judgment disposing of such claim.*

The judgment shall terminate the action with respect to the claim so disposed of, and the action shall proceed as to the remaining claim."

Brief History of the Litigation.

The three present appeals have originated in the partnership dissolution, receivership, and accounting case of *Creel v. Creel,* Equity 55,407, in the District Court of the United States for the District of Columbia.

The Bill of Complaint (R. 2) was filed by Respondent, on Feb. 28, 1933. A receiver was appointed on March 31, 1933. The appointment of the receiver was affirmed on Appeal, June 25, 1934; 63 App. D. C. 384; 73F. 2nd, 107. Petition for Certiorari was denied by the Supreme Court; 294 U. S. 723.

No other appellate decisions on the merits, have been rendered in the case, excepting only the decision on the present three appeals. This is reported in 149 F. 2nd 830, and is also printed in the record, (R. 913).

The Partnership Business

The partnership business involved is that of Creel Bros., a comparatively large auto-parts jobbing and electric service business of 1811 14th St. N. W., Washington, D. C.

The business assets had an appraised value on Feb. 1st, 1944, of approximately $222,000, exclusive of some $79,000, in the bank balance of the firm as of that date (R. 368). And since the firm had raised its balance to $140,000 on Jan 15, 1944, with bills paid (R. 902) it can be estimated that the business is earning approximately $70,000 per year.

It can also be fairly estimated, that the firm now has a net worth in excess of $450,000; and also that the firm now has over $200,000 in its bank balance.

The Partners Interests

The partnership business was founded by petitioner in 1919. A few months later, Respondent, petitioner's younger brother, was taken into the partnership on a 40% basis. A little later petitioner gave him an additional 10% interest. Since that time each partner has owned a ½ interest; except that through an allegedly corrupt finding of the Auditor, (R. 284), Respondent was given credit for an alleged excess capital contribution of $4,933.60. (R. 174.)

Contributions of the Partners

As a preliminary indication of the character of this receivership — and as an introduction to the statement of the alleged fraudulent abuse of this receivership, and as next set out — it may be stated that petitioner, as the senior and managing partner, contributed to this partnership, a one-half interest in a predecessor partnership—and which interest had an estimated value of $3,000. Petitioner also contributed a further $300 in cash. Thus, a total of $3,300 was contributed, by petitioner, to the original capital of the partnership. (R. 560-562).

Also, in 1925 — after the firm's building had been purchased at a cost of $130,000 — a principal agency of the partnership was lost; and the firm was then faced with a threat of immediate bankruptcy.

Petitioner then, however, sold his compressor invention, (R. 568) and received therefrom $25,000 in cash. That amount was then advanced to the partnership by Petitioner in the year 1925 and 1926; and the partnership was thereby kept from almost certain bankruptcy. (R. 19).

This made a total of $28,300 of advance and capital contributions, that Petitioner had made to the partnership.

Respondent, on the other hand, contributed a total of $1,200 to the capital only. (R. 561, par. 6).

Nevertheless, through an allegedly corrupt finding of the Auditor, (R. 284) — and as stated— Respondent was given credit for an alleged excess capital contribution of $4,933.69.

SUMMARY STATEMENT AS TO THE REVIEW SOUGHT, UNDER THE SUPERVISORY POWERS OF THE COURT, FOR CORRECTION OF AN ALLEGED CRIMINAL ABUSE OF RECEIVERSHIP IN THE CASE.

Certiorari is sought in this cause, under two general phases of this Court's jurisdiction.

That is: Certiorari is sought — on the one hand — under the general supervisory powers of the Court; for general review and correction of an alleged criminal abuse of receivership, that has been carried on against this Petitioner, in this suit, for more than 12½ years past.

This more general conspiracy had, for its original object, the seizure of control, of a valuable partnership business, through abuse of this receivership; and with the primary aim, that the control of the partnership business, would thus be turned over to Respondent, as manager under the receiver, that he himself had been appointed more than 12½ years ago.

A second aim of the said conspiracy was, that by that means, it was proposed to have petitioner's income shut off, through

the seizure of all of Petitioner's property; and so that thereby, Petitioner would ultimately be compelled to sacrifice his interests in the partnership, to Respondent, the plaintiff partner.

And this fraudulent scheme — in its more general aspects — has been carried on against Petitioner, and under this receivership, for more than 12½ years past.

Respondent's Seizure of Control of the Partnership Business

In pursuance of this fraudulent scheme Respondent first alienated and secured control of one of the vital agencies of the partnership. Counsel for Respondent, then made coercive demands on Petitioner for the sacrifice of Petitioner's interests in the partnership — and under threat of receivership if refused.

And on refusal by petitioner of these said blackmail demands; Respondent then in 1933 had the business thrown into receivership, and on what now stands admitted on the record as a perjured Bill of Complaint. (R. 402).

Thus in March, 1933, all of this Petitioner's property, to an estimated amount of at least $100,000; was seized through the receivership, and the entire property was then turned over to the control of Respondent, the plaintiff partner, as manager under the receiver. (R. 227).

By that fraudulent but successful means; Respondent has not only ousted petitioner from any share or interest in the control of the partnership business; but further, plaintiff has thereby secured for himself, a salary of $100 a week; and so that the Respondent has by now been illegally paid more than $65,000 of the firm's funds, as a so-called salary from the receiver. (R. 224, R. 251).

Meanwhile, during the first 10½ years of the receivership; Petitioner's income was almost completely shut off; and so that — while the business is estimated to have earned more than

$300,000 during the period — and while Respondent was being paid more than $50,000, as aforesaid — Petitioner was given a total allowance from his property, during that same 10½ years, of only $4,130. (R. 224).

But, after more than 10 years of that attempt to blackmail this petitioner, into a surrender of Petitioner's interests in the partnership, to Respondent; it seemingly became apparent to Counsel for Respondent, that Petitioner could not be coerced in that fashion.

The Supposed Fraudulent Sale of the Property

Early in 1942, after nearly 10 years of that blackmail attempt, a change was apparently made in Respondent's plan. For a scheme was then undertaken to have the partnership business sold at auction sale (R. 201), but under conditions which, superficially, would appear to be a fair public sale; but where — instead — the conditions were so arranged that, supposedly, no one other than Respondent could actually become the purchaser.

That is, it was obvious that no outsider would care to bid on the property — unless the business were being sold at an enormous sacrifice — because the business is of a highly technical agency character; and if its agencies are lost, the business would be ruined.

And since Respondent has been in practically complete control of the business, for the past 12½ years, as manager, under the Receiver; he has had unlimited opportunity to alienate, and secure practical control for himself, of the vital agencies of the firm.

And if, therefore, any outsider should have ventured to purchase the property; Respondent could then have taken away the agencies, and the trained personnel, and have started up an opposition business; and could thus have left a mere wreck of the business, that had been sold to the purchaser. (R. 275.)

Respondent's Draft of the Order for Sale

In pursuance of the above mentioned scheme to have the partnership business sold to Respondent at a fictitious public sale; Respondent, on March 13, 1942 (R. 200-21) filed a motion for an Order for sale of the partnership property. With that motion, Respondent filed a draft of the proposed order for sale; and that draft was later adopted by the Court (R. 231) on Aug. 31, 1942. The only change made was as to a correction of the amount of the mortgage outstanding on the property.

Summary of Provisions of the Order for Sale

As a means of attempting to carry through the aforesaid fraudulent sale; Respondent inserted various provisions in the draft of the proposed Order for sale. These were as follows:

(1) That either partner could bid and become the purchaser at the public auction sale;

(2) That if either partner became the purchaser, he should be entitled

(a) *at the final settlement and payment of the purchase price*

(b) *to use and apply toward the payment of such purchase price*

(c) such amounts as the receiver might fairly estimate to be the said partner's distributive interest in the assets.

(3) That upon final settlement of the sale, each of the partners was required to execute a conveyance of the partnership property to the purchaser.

(4) The order for sale further provided, (R. 232) that all the assets of the partnership, merchandise, equipment, Real estate, good will, and accounts receivable, and all

other personal property of the said co-partnership "(excepting cash on hand)" were to be sold as an entirety at the said public auction.

Fraudulent Character of the Said Provisions

An examination of the provisions of that order for sale, shows that it was deliberately contrived, to accomplish — what was supposed to be — practically an outright theft of the partnership business, for Respondent.

The Provision That Either Partner Could Purchase

As a means of attempting to carry through the aforesaid fraudulent sale; Respondent provided in the above said order (R. 233) that at the proposed auction, either of the partners could bid and become the purchaser.

This provision is of course in flat contradiction to the inflexible rule laid down by this Court — and every other Court of which this Petitioner has knowledge — and also by the Uniform Partnership Act as enacted in 16 states, and in Alaska — that a partner stands in a fiduciary relation to the partnership, and to his co-partner; and that as such he must account to the partnership for any gains made by him, in any transaction connected with the formation, conduct, or *liquidation* of the partnership. *Kimberly v. Arms,* 129 U. S. 512, 528; 32 L. Ed. 764, 770.

It is further provided by the Uniform Partnership act, in effect in the said sixteen states — and also by principles followed by this Court—that dissolution does not terminate the partnership. Instead, dissolution merely changes it from a continuing partnership, to a partnership for the purpose of winding up the partnership affairs. *Sutherland v. May,* 271 U. S. 272.

It thus follows, that any purchase of partnership property, without consent of his co-partner — and either before or after dissolution — is held to be fraudulent per se, and must be set aside on the mere request of his said co-partner.

And so inflexible is the rule; that no inquiry as to the fairness of any transaction so entered into by such a fiduciary, is even permitted to be raised. *Arnold v. Carter;* 217 U. S. 286.

Counsel for Respondent, however claims he can evade this rigid bar against any such dealings by a fiduciary, by the mere expedient of having the Court pass an order giving Respondent the right to purchase.

The Apparent Futility of Any Sale to Respondent

This fiduciary bar does not hold against a purchase of the business by Petitioner; for Respondent has given his specific consent to such purchase by Petitioner. (R. 290). And even before that specific consent; Respondent must seemingly be held to have given his consent to such purchase by petitioner, because Respondent forced through the provision, in the order for sale —and over Petitioner's protest—that either partner could bid on and become the purchaser of the property.

That fiduciary bar does hold against Respondent however; for Petitioner has never given his consent to a purchase of the business by Respondent. And thus, even though the sale to Respondent should be carried through; it would be a mere futility, for it would have to be set aside, as fraudulent per se, on the mere motion or request by this Petitioner.

It is further to be noted, that Respondent makes the claim, that the charges of fraud made against Respondent by Petitioner, have never been proved. But the very attempt that Respondent is making, to purchase the business for himself, is stamped by the law, as fraudulent per se.

The false claim that Petitioner proposed bidding by the partners.

Although Counsel for Respondent did not openly make the claim in his motions to dismiss the two appeals, in this case; that Petitioner had proposed, that the partners should be permitted to

bid against each other, at a public sale of the partnership property; Respondent does make that false claim by inference.

For in his memorandum (R. 244), in opposition to petitioner's motion for rehearing, as to the grant of that said order for sale; Respondent quotes an excerpt, from a hearing in the District Court, *to apparently show that petitioner had suggested such competitive bidding.*

The facts were instead, that Petitioner claimed that by reason of the purchase of the firm's building, on a 14 year contract; the partnership was not terminable at will, but was—instead—a partnership for a 14 year term; and that term extended until 1938. (R. 324, Par. 54-58).

Petitioner contended that Respondent had wrongfully broken that non-terminable contract; and that therefore, under provisions of the Uniform Partnership Act, petitioner — as the non-wrong-doing partner — should be entitled to take over, and continue the partnership business. And although this provision has never been passed on by any Federal Court; *Petitioner asked that it be applied in this case.*

But that right of Petitioner, as the non-wrong-doing partner, to take over the partnership business—even had it been recognized—would have expired in any case in 1938. Furthermore, even had that right existed, it could not have been claimed by Respondent, for Respondent denied that the partnership was a partnership for a fixed term; and thus that ground for purchase by himself, would not have been open to Respondent, even prior to 1938.

Respondent's Further Claim That a Partner Can Purchase at a Public Auction; and His Falsification of the Rule of Cresse vs. Loper.

As set out in his memorandum (R. 244) in opposition to Petitioner's motion for rehearing, as to the Order for sale; Respondent claims he is not debarred from purchasing the partner-

ship property, if the sale is at public auction; and and if both partners are given an opportunity to bid on the property.

As justification for that claim, he cites the case of *Cresse v. Loper,* 72 N. J. Equity 784; 65 Atl. 1001. Counsel for Respondent cites that case as having ruled that a sale to a plaintiff partner, at public auction, would be set aside, and a resale ordered; where the sale was made *while the defendant partner was confined in an insane asylum;* and where the guardian of the defendant had been misled by the plaintiff. Counsel further says, that the rationale of *Cresse v. Loper* does not therefore apply in this case.

This however is a complete falsification of the New Jersey law. For the facts are, instead, that the Uniform Partnership Act is in effect in New Jersey. A partner is therefore forbidden to purchase partnership property on his own account, and without consent of his co-partner, under any conditions.

And what *Cresse v. Loper* really held was, that it had long been the law in New Jersey; that anyone standing in a fiduciary relation could not become the purchaser of the trust property; and that the circumstances of the *Cresse v. Loper* case, showed the wisdom of that rule.

The Fraudulent Provision for an "Estimate" by the Receiver

The provision No. 2, of the said order of sale, as set out above, was likewise intended, and has been used for a fraudulent purpose. That provision is: that if either partner became the purchaser; he was to be given credit, *on the final settlement and payment of the purchase price,* for whatever amount the receiver might "fairly estimate" to be the said partner's distributive interest in the assets.

It will be noted that the credit to be allowed to the purchasing partner, is not merely a temporary credit; but is instead, a credit which is to be used as part payment, *in the final settlement and*

payment of the purchase price. And the Receiver was then authorized to deed over the property finally, to the said purchaser, *without any further reference to the Court.*

This provision might be entirely legal, if the Court, as in the California case of *Owen v. Cohen;* 119 Pac. (2) 713; had first decided precisely the manner, in which the said credit was to be computed by the Receiver.

The sinister character of that provision, however, becomes apparent when it is seen that under it; it was proposed that the Receiver was supposed to hold—after Respondent had purchased the business—that in purchasing the partnership business, Respondent had actually purchased also, the $79,000 bank balance of the partnership.

For, had Respondent purchased the business at the original sale of Feb. 1st, 1944; and under the said "Order for sale", he would have purchased all of the assets of the partnership except "cash on hand". And, as is shown by the Receiver's own financial statement for the firm, on page 176 of the Record; the term "Cash on hand" has been continuously used in the firm, it is in general banking practice, to distinguish the money that is in one's own possession, from the funds that may be available from a bank balance.

GENERAL OUTLINE OF REVIEW SOUGHT UNDER THE APPELLATE POWERS OF THE COURT

As previously stated; certiorari is sought in this cause, under two general phases of the court's jurisdiction; that is—on the one hand, and—as set out in the preceding section—review is sought under the general supervisory powers of the Court for correction of an alleged abuse of receivership in this case.

Review is also sought under the Appellate powers of the court; for reversal of the action of the Court of Appeals in this cause; and thus for correction and reversal of three successive

and allegedly fraudulent orders, that were issued by the District Court in this case.

The Basic Issue in the Litigation

The basic issue in the litigation itself, is as to which of the two partners, the partnership business shall be awarded to; under two successive sales by the District Court.

That is, whether the Order for Resale, (R. 339) of March 22nd, 1944—and as appealed from by appeal No. 8,770, (R. 340)—shall be reversed; and the partnership business be then ordered turned over to this petitioner—as of the date of sale, Feb. 1, 1944, (R. 264), and at the bid price of $240,500; and under the terms of the original Order for Sale, (R. 234).

Or whether—as an alternative—the order appealed from in appeal No. 8,910 shall be affirmed; and this being an affirmance of the Order finally confirming sale of the partnership business to Respondent, (R. 524), and as of the sales date of May 1st, 1944.

A Controlling Question as to All Three Appeals

A controlling question as to all three appeals—though not the sole one—arises in connection with the principal appeal, No. 8,770.

That question is: Whether a confirmed purchaser at a judicial sale, has a right of appeal from an order for resale; where the said order for resale was entered against the said confirmed purchaser; in the course of a summary proceeding by the District Court, against the said purchaser as an alleged defaulter; and where the said order for resale, holds the said purchaser in default, and orders the "assets purchased" to be resold, at the said purchaser's risk and cost.

And although this precise question has not been passed on—apparently—by this Court; it is petitioner's contention, that that question has been settled by the holding in *Kneeland v. American Loan and Trust Co.*, 136 U. S. 89, 34 L. Ed. 379.

For under this broader rule this Court held that a purchaser or bidder at a judicial sale, has a right of appeal against any subsequent order which adversely affects his rights; and where the terms of said order are not foreclosed to the said purchaser or bidder, by the terms of the order for sale.

Petitioner contends further, that *this same result is arrived at under the widely recognized rule of Forgay v. Conrad,* 6 How. (16 U. S.) 653, 12 L. Ed. 379, 404; and which is that a party to a suit has a right to an appeal from an interlocutory order, that is immediately executable; and where the said order might cause irreparable injury to the party affected adversely thereby.

It is petitioner's contention therefore that either of the above quoted authorities is actually conclusive, as to all three appeals involved in this petition.

Controlling Questions as to Appeal No. 8910.

In similar fashion, there are at least three equally controlling factors, against the validity of the order appealed from in Appeal No. 8910.

One of these factors is, perhaps, of special importance from the standpoint of the grant of a Writ of Certiorari; and that is, that the supposed sale of the partnership business, to Respondent, was not made at the public sale of May 1, 1944. (R. 340.)

Instead, the Court order of May 24th shows that the Court rejected both bids made at the public sale on May 1st; and that the Court then proceeded to sell the partnership business, to Respondent at what was quite obviously a supposed continuation of that public sale of May 1st (R. 340).

And on that basis; the procedure of the District Court, in supposedly selling the business to the Respondent; *comes squarely in conflict with the ruling of the Eighth Circuit,* (1935) in *Bovay v. Townsend,* 78th F. 2d, 343.

For in this last case, *the Eighth Circuit held that the sole power of a District Court, in a public sale, under Section* 847, *is to either*

confirm the sale as made at auction, or to set it aside and to order another.

Invalidity of the Sale to Respondent as a Supposed Public Sale.

A further factor against the validity of the sale to Respondent; is the fact that that said sale was not a valid public sale, under Section 847. For the said sale was not advertised for four weeks as required by Section 849; nor was that sale made on the premises, in accordance with the previous advertising, for the public sale of May 1st.

Invalidity of the Sale to Respondent as a Supposed Private Sale

That sale to Respondent was furthermore, not a valid private sale under Section 847; because no hearing was ever held by the Court, as to such a private sale. No notice was ever given by direction of the Court, that any such hearing was to be held; and the terms of sale were never advertised. That sale to Respondent was thus not a valid private sale.

The Seeming Invalidity of Any Private Sale of Land Under Section 847; Where Such Land Is in the Hands of a Receiver.

But even though the statutory conditions, for a valid private sale to Respondent had been complied with; it appears that any such private sale to Respondent, would still have been invalid; and this for the reason that Section 847, Title 28 U. S. C. (see Appendix "A"), apparently requires, That any interest in land, sold at judicial sale, by a Federal Court, *must be sold at public sale; if the said land is in the hands of a Receiver at the time it is offered for sale.*

This point has apparently never been passed on by this Court. But it appears from rules long established by this Court; that the more general fourth subdivision of Section 847, which permits

of a private sale of land (see Appendix "A"), is overruled by the third more specific subdivision; and which said more specific subdivision requires, that any interest in land sold at a Federal judicial sale, must be sold at public sale, *if it is in the hands of a Receiver when it is offered for sale.*

The Impossibility of Identifying the Assets Supposedly Sold to Respondent.

A further conclusive reason against the validity of the sale to the Respondent; is the fact that it is impossible to identify the assets that were supposedly sold to Respondent.

For the assets supposedly sold to Respondent were those offered for sale at public auction, on May 1st, 1944 (R. 467), under the order for resale of March 22nd, 1944 (R. 339). But the assets offered for sale on May 1st, under the order for resale of March 22nd, were the assets that were sold to petitioner at public sale on February 1st, 1944.

Those said assets were to be sold at Petitioner's risk and cost. Obviously, those assets could not have been sold at Petitioner's risk and cost as of any other date than February 1, 1944—the date of the said sale to Petitioner; and the order for resale of March 22nd states specifically, that the assets to be resold were the assets of Creel Brothers that had been sold by the Receiver at public auction on the first day of February, 1944.

No inventory was taken of the said assets on February 1st. An estimated $130,000 worth of merchandise was sold out of the merchandise stock between the two dates of February 1st and May 1st; and the accounts receivable between the two dates had been reduced from an appraised value of $29,114 to an appraised value of $23,736 (R. 267, R. 497).

But these same assets sold to Petitioner on February 1st were supposedly resold to Respondent, as of May 1st, 1944; and those said asets of February 1st—and of which no inventory was taken —cannot be identified as of May 1st. Thus the sale to Respond-

ent cannot be legally completed, because the assets sold cannot be identified. And since this defect was apparent on the face of the order for sale, that fact would be sufficient to chill any competitive bidding; and thus the said sale to Respondent would legally have to be set aside in any case.

Futility of Any Sale to Respondent

A final reason why the supposed sale to Respondent is illegal and void; is because Respondent stands in a double fiduciary relationship to the partnership; and in that, he is both a partner, and also for the the past 12½ years he has been Manager of the business under the Receiver. And in both capacities Respondent is debarred from any purchase of the partnership property, without the consent of this Petitioner; and that consent, Petitioner has never given.

Furthermore, any such sale to Respondent would be a mere futility. For under rules that have been long established by this honorable Court; any such sale of trust property to a fiduciary, is stamped fraudulent per se; and must be set aside at the mere request of this Petitioner, his co-partner.

The Easy and Equitable Settlement of This 13 Year Receivership by Ordering the Partnership Business Turned Over to Petitioner.

From the foregoing analysis of some of the more crucial issues in the three appeals; it is believed apparent: that if Certiorari is granted, and if the partnership business is ordered turned over to Petitioner—under the terms of the original order for sale—and at the bid price of $240,500—and as of the date of the original sale to Petitioner, Feb. 1, 1944—this 13 year receivership can be brought to a speedy close.

And if on the other hand, Certiorari is denied; the sale to Respondent cannot be legally completed; and any attempt to do so, would mean either that that sale would have to be set aside,

at request of this Petitioner; or, that principles consistently upheld by this Honorable Court, would have to be ignored and forgotten.

SUMMARY STATEMENT OF THE SUBJECT MATTER OF APPEAL No. 8,770

In a preceding section relating to Petitioner's request for review and correction—under the supervisory power of the Court —of an alleged abuse of receivership in this case; Petitioner set out in some detail the antecedents of the Order for Sale, and out of which the present three appeals have originated.

As preliminary to this summary statement, of the subject matter of Appeal No. 8,770; Petitioner will briefly restate the principal events as to the Origin of that said Order for Sale. (R. 231).

Antecedents of the Order of Sale.

On March 13th, 1942, Respondent filed a motion (R. 201) for an Order for Sale of the partnership business.

Respondent's motion was obviously framed in accordance with the requirements of Rule 54-b of the Rules of Civil Procedure. His said motion was therefore based on the claim, that all matters at issue between the partners, had been litigated; and that the interests of the partners, in the assets had been finally determined.

Respondent further, in his said motion (R. 201) made the claim that the interests of the partners, in the assets, having been finally determined; the cause was in a condition for a sale of the partnership business, and a distribution of the proceeds.

It will later be seen, however, that after Petitioner had bought the partnership business at public auction; Respondent then claimed that the issues between the partners had not been thus finally determined; and that $60,000 of receivership costs should be assessed against Petitioner, by the Receiver. It will also be

seen that on that mere assertion by Respondent; the Receiver demanded that Petitioner pay him an additional $60,000 in cash, to cover those said alleged costs; and that when Petitioner refused to meet that illegal demand; the Receiver then had Petitioner declared in default, and the property ordered resold, at Petitioner's risk and cost.

The present Appeal No. 8,770 was taken from that said Order of Resale. (R. 339.)

The Order for Sale.

On August 31st, 1942, the said Order for Sale, (R. 231), was issued by the Court; and in the form that it had been proposed by Respondent, excepting only for a change in the amount of balance due, on the mortgage, on the firm's business property.

Terms of the Order for Sale.

By the terms of that Order for Sale, (R. 231), it was decreed, that all the property of Creel Bros., consisting of the merchandise stock, equipment, real estate, good will, and accounts receivable; and all other property of every kind "(except cash on hand)" should be sold at public auction.

It was further provided that either partner could bid on, and become the purchaser, at said auction sale.

It was further provided, that if either partner became the purchaser, he should be *"entitled at the final settlement and payment of the purchase price, to use and apply toward the payment of such purchase price, such amount as the Receiver may fairly estimate to be his (the partner's) distributive interest in and to the said partnership assets."*

It was further provided that the purchaser should make a deposit of $10,000 at the time of sale; and that final settlement of the purchase must be made within 30 days after confirmation of the sale to the purchaser.

It was further provided, that the Receiver should continue to operate the business, between the date of sale and final settlement of the purchase; and that the Receiver should account to the purchaser for the proceeds of the business, less expenses, during that interim.

It was also provided, that on final settlement of the purchase, both partners were required to execute a deed to the property, to the purchaser.

It was also stipulated, in the Order for Sale, that the interests of the partners in and to the partnership assets had been finally determined by the Auditor's report of January, 1939.

The Sale of the Partnership Business.

The partnership business was put up for sale at public auction on Feb. 1st, 1944. Respondent made the first bid of $160,000. This was raised $500 by Petitioner. Respondent bid another thousand, and Petitioner raised the bid $500 each time.

Respondent dropped out of the bidding at $240,000; and the property was then sold to Petitioner at the bid price of $240,500.

Confirmation of Sale to Petitioner

The sale was confirmed to petitioner, on Feb. 9th, on motion of the Receiver—and with the consent of Respondent. (R. 290.)

Objections of Petitioner to Manner and Time of Confirmation.

Petitioner also asked confirmation of sale. But petitioner objected to the form and manner in which the confirmation was rushed through by the receiver. (R. 268.)

Petitioned objected:

(a) That the Receiver had rushed through the hearing on confirmation, without motion and notice, as required by District Court Rules.

(b) That petitioner was given but four days notice, instead of the five required by rule.

(c) That this short notice, caused the time for settlement, under the thirty day limit, to fall on March 10th, instead of on March 11th.

(d) This meant that the cash received on the day of heaviest cash receipts, March 11th, was thus not available to petitioner to apply on the purchase price. And whereas, had petitioner been given proper notice of five days; the settlement date would have fallen on March 11th; and petitioner would have an additional $10,000 or so, available from the March 11th, receipts.

Still further, had petitioner been given a normal time to consider the form of the order for confirmation, and to permit petitioner to make the motion for that confirmation; and if thereby the time for settlement, had been delayed until after the fifteenth; an additional sum of perhaps $15,000, or a total further sum of perhaps $25,000 cash would have been available, to petitioner, to apply on the purchase price of the property.

And that additional $25,000 cash might have meant the difference between petitioner's being able, or being unable, to complete the purchase within the 30 day time limit set by the order for sale.

(e) Any such attempt to "pinch" petitioner's available funds, was particularly reprehensible, because at the time the Court was holding an estimated $150,000 of petitioner's property; and which property had been seized by the Court, only on Respondent's mere request for the appointment of a receiver.

(f) This whole hurried action was therefore an open attempt on the part of the Receiver to prevent completion of the purchase by petitioner.

Petitioner objected further to the form of the order, and to the manner, of confirmation.

And in this respect, petitioner relied on the holding by this Court in *Pewabic Mining Co. v. Mason,* 145 U. S. 349; 36 L. Ed. 732, where the Court said:

> "The Chancellor will always make such provisions for notice and other conditions (of a judicial sale) as will in his judgment best protect the rights of all interested, and make the sale most profitable to all; and after a sale has once been made, *he will certainly, before confirmation, see that no wrong has been accomplished in it by the manner in which it was conducted.*" (Italics added.)

And on this basis, petitioner objected to the manner of confirmation, (R. 2890), both as to the manner in which it had been rushed through; and also to the fact that the District Court—Mr. Justice Goldsborough—refused to include in the order of confirmation, suitable provisions that would have protected petitioner against the fraudulent demands that—in petitioner's opinion—it was obvious that the Receiver would make; and so that thereby, petitioner's right to complete the purchase would be defeated.

The Attempted Intimidation by the Receiver and Respondent

Between February 16th and 28th, 1944, the Receiver and Respondent made numerous attempts to intimidate Petitioner; and to keep Petitioner from completing the purchase of the business; through threats of loss of the firm's agencies, and of the trained personnel of the firm. And the Receiver then further, without consulting Petitioner, gave 90% of the employees of the firm, their releases under the manpower act.

Illegal Demands Made by the Receiver

Between February 16th and March 4th, 1944, the Receiver made various illegal and fraudulent demands—as to the amount payable by petitioner, as balance due on the purchase price; and over and above the credit properly allowable to petitioner, on

account of petitioner's half interest in the partnership property.

Under the order for sale, (R. 231), all assets of the partnership of every kind, including goodwill and accounts receivable, were sold to petitioner at the bid price of $240,500.00; and excepting only "cash on hand."

The usual assets of the partnership are shown in the Receiver's financial statement for the firm, as of April 19, 1938 (R. 176).

As there shown the assets of the firm consist of "cash on hand and in bank," accounts receivable, merchandise, due from manufacturers, notes payable, refunds due on insurance, equipment, prepaid expenses and the business real estate.

And under the order for sale, all of these assets excepting "cash on hand" were sold to petitioner at the bid price of $240,500.00.

The Receiver, however; demanded that petitioner pay him over again for $2,248.00 of miscellaneous assets such as rent, and insurance paid ahead, credits due from manufacturers and the like.

The receiver further deducted $394.02 from the cash that was received subsequent to the sale. He thus deducted that amount from the proceeds belonging to the purchaser.

This made a total of $2,248.00 as aforesaid of assets purchased by petitioner but which the Receiver demanded the petitioner should pay for over again.

These said miscellaneous items, to the amount of $2,248.00, were assets of the firm at the date of the sale February 1, 1944; *they were not "cash on hand" as of that date;* and *they were consequently sold to petitioner in the bid price of* $240,500.00.

The receiver, however, claimed that these charges were adjustments, and that he was entitled to require added payment for them; and this although the Receiver's sole authority in the matter was derived from the order for sale; and there was noth-

ing in the order for sale, which authorized any such adjustments to be made by the Receiver.

Petitioner refused to meet either of those illegal demands, or still others which were also made by the Receiver. That refusal, by petitioner, was then made the basis of the alleged default charged to petitioner, And this fact was used as justification, for the order for resale, which was then entered against petitioner.

The Receiver's Actual Estimate of Petitioner's Distributive Interest

From the second page of the estimate supplied by the Receiver, as to the balance payable by petitioner, on the purchase price (R. 369); it will be seen that the Receiver actually estimated the credit due to petitioner, to be one-half of the total net assets, or $143,706.00; and this would have left a balance due and payable by the petitioner on the property, of $96,894.00. Or if the $2,248.00 of illegal demand by the Receiver had been eliminated this would have left a balance due and payable on the property by petitioner of approximately $94,646.00.

The Further $60,000 Demanded by the Receiver

As stated, the Receiver's own estimate (R. 369) showed the credit allowable to petitioner on the purchase price to be $143,706.00; thus leaving a balance payable by petitioner of $96,894.00.

The Receiver then further demanded, however; that petitioner should pay him an additional $60,000.00 in cash; to cover alleged receivership costs; and which costs, the receiver stated, respondent now claimed should be charged against petitioner.

By this means the Receiver was able to demand (R. 369) that petitioner pay him a total of $158,218.00; but this amount includes the $10,000.00 deposit, made by petitioner, at the time of the sale.

No authority was given the Receiver in the order of sale to make any such demand on respondent. Furthermore, the Re-

ceiver was well aware that respondent was stopped from making any such claim against petitioner, because of the repeated claims by respondent—and which claims he had inserted in the Order for sale itself—that all matters in dispute between the partners had been finally adjudicated; and that it had been finally settled and determined—by the Auditors' report of 1939—that each partner owned one-half interest in the assets but subject to the prior credit to respondent, of $4,933.69 for alleged excess capital contribution.

The order for sale itself (R. 231); made the same repeated assertion that all matters in dispute had been adjudicated between the parties.

Petitioner, therefore, refused to meet this further illegal demand by the Receiver for payment of that added $60,000.00.

The Receiver had thus made illegal demands on petitioner for $2,248 as payment for assets that had been sold to the petitioner, at the original sale; and a further $60,000.00 for alleged Receivership costs. This was a total of $62,248 that was illegally demanded of petitioner by the Receiver.

The Receiver's Falsification of the Terms of the Order for Sale.

It will be observed that under the terms of the order for sale (R. 231) the Reeciver was required to make a fair estimate, of petitioner's distributive interest in the assets; and then to allow petitioner a credit, of that amount in the *final settlement and payment of purchase price.*

Furthermore, that payment in full settlement, by petitioner, was required to be made within thirty days; and the Receiver was then authorized and directed, to deed over the property to petitioner; and without any further reference to the court.

The Receiver, however, misinterpreted that provision as though it had read that he was merely to give a temporary credit to petitioner, on the purchase price; and that the actual amount to

be allowed to petitioner on the purchase price was then to be settled in a later accounting.

The $37,500 Error in the Receiver's Figures.

But even though there had been an authorization to the Receiver, to make any such demand on petitioner—for payment of receivership costs—there would still have been a $37,500 mistake in the receiver's own figures, as to the said Receivership costs.

At the time that the purchase, by petitioner, was due for settlement; that is, March, 1944; the Receiver refused to give any explanation of his demand—for that $60,000—for receivership costs—other than that $40,000 of the amount, was for receivership costs already incurred; while a further $20,000, was for receivership costs that were estimated to be payable in the future.

Two months later, however; that is, on May 5th, 1944; the Receiver sent a letter to petitioner in which he still claimed, (R. 361); that he was not required to give any explanation of his said demands; but that nevertheless, he would do so.

It was then apparent from his further explanation (R. 361) that of the $40,000 of receivership costs already incurred, $5,000 was for costs not yet paid, of the sale to petitioner on February 1st. The remaining $35,000 was for costs of receivership already paid.

It was then further evident, however; that of the $35,000 of costs already paid; $17,500 of that amount, *had been paid out of petitioner's own share of the partnership funds;* and that the receiver had thus demanded, that petitioner pay him over again for $17,500 of costs that had already been paid by petitioner.

It was further apparent; that the Receiver's demand for $20,000.00 for receivership costs estimated to be incurred in the future was likewise without any justification.

For, had petitioner paid the $40,000 illegally demanded by the receiver, petitioner would have taken over the business immediately. The receivership would then have been terminated; since

there would only have been a sum of money in the custody of the court; and there would have thus been no further, or very little receivership costs of any kind.

This was a total error of $37,500 in the Receiver's claim for receivership costs allegedly payable by petitioner.

Petitioner charges therefore that petitioner was not required to meet the illegal demand of the receiver; that petitioner pay either the $2,248.77, for items that had already been purchased by petitioner, in the bid price of $240,500; nor the $17,500 of receivership costs that had previously been paid by petitioner; nor the $20,000 for future receivership costs, of a receivership that would have terminated, had petitioner paid the $40,000 of costs previously paid; nor even the remaining $17,500 which, the receiver said, that Respondent claimed should be assessed against this petitioner.

And since petitioner was not required to meet that illegal demand, that petitioner pay some $62,248.79, over and above the amount, which the receiver's own estimate showed to be the balance due by petitioner; petitioner was not at fault, in his failure to consummate the sale under those conditions.

Refusal of Petitioner to Make a Tender.

By the Receiver's letter of March 4th, (R. 379) in which the Receiver transmitted his estimate (R. 368-369) as to the amount payable as balance due by Petitioner, on the purchase price; it was apparent that the Receiver intended to maintain his position, as to the demands that he had made.

It was evident that the tender of any proper amount by Petitioner—when the Receiver even refused to give petitioner any information as to the basis of his estimate—would be wholly useless. Petitioner therefor made no tender of any kind.

Petitioner's Appeal of March 10th.

The terminal date of the 30 day period for settlement of the purchase price, was at 4 P. M., on March 10th. And since it was

apparent that any tender by petitioner, would be wholly useless; Petitioner, therefore, on the afternoon of March 10th—and before the expiration of the time limit for the final settlement of the purchase—filed his notice of appeal from the Order of Feb. 9th, (R. 283) and by which said order the sale of the partnership business was confirmed to this Petitioner.

The Apparent Stopping of the Running of the Time Limit Against Petitioner.

In *Bronson v. LaCrosse,* 1 Wall. (68 U. S.) 405-411; This Court held that an appeal by a party, from an order in his favor, suspends the execution of the decree—and that no supersedeas was necessary to suspend the execution in such a case.

It is Petitioner's contentions therefore; that by reason of the noting of that appeal (R. 298) by Petitioner on March 10th, 1944, against the Order which confirmed sale of the partnership business, to Petitioner, on Feb. 9th, 1944 (R. 283), that thereby also, the running of the 30 day time limit, against Petitioner, was stopped, as of the afternoon of March 10th, And since this was before the expiration of that said 30 day time limit; Petitioner seemingly could not thereafter be guilty of default. For under the rule of *Bronson v. LaCrosse,* above, it would have been impossible for Petitioner to complete the purchase, after the filing of that said notice of appeal.

One of the issues thus presented by this petition is whether an appeal taken by a party, against an order in his own favor, suspends the running of a time limit against that party, under the said decree.

Transfer of Jurisdiction to the Appellate Court by Petitioner's Appeal of March 10th.

It may be noted, that Counsel for Respondent has never questioned the validity of that appeal by Petitioner on March 10th, 1944, from the Order of Feb. 9th, confirming sale of the partnership business to this Petitioner.

Petitioner has also set out elsewhere herein, the grievances of Petitioner against that said Order.

And since no question has been raised as to the validity of that said appeal, by Petitioner, on March 10th, 1944; Petitioner contends that, by reason of that said appeal; all jurisdiction over the subject matter of that appeal was transferred to the Court of Appeals, as of the afternoon of March 10th, 1944.

Invalidity of the Order for Resale of March 22nd

Despite this seemingly obvious transfer of jurisdiction to the Court of Appeals; the District Court nevertheless proceeded on March 22nd—or just 10 days later—to enter its order of resale against this Petitioner. And thus—as Petitioner believes—that said Order for resale was not only fraudulent in itself; but further, it was absolutely illegal and without any validity.

Nevertheless, it is Petitioner's understanding that until that said Order for resale is reversed by an Appellate Court; it is still binding on the District Court; and this appears to be another question that should be settled in this case, by the grant of a writ of Certiorari.

The Alleged Fraudulent Justification for That Usurpation of Jurisdiction by the District Court.

As grounds for this usurpation of the appellate jurisdiction; the Receiver urged (R. 308), that *"Delay in settlement may result in irreparable loss to and depreciation of the assets and good will."*

Also, on February 9th, 1944, and as a reason why it had been necessary to hurry through the confirmation of the sale to Petitioner, on an illegally short notice; The Receiver said, (R. 294) "Now, if we do not close this sale promptly the whole thing might fall out from under us and I do not want it to fall out from under me while I have it in charge."

Thus, when it was a question of using illegal means to defeat the purchase by Petitioner;! the Receiver and Respondent urged that an immediate sale was necessary to prevent an immediately threatened collapse of the business.

But after the Court had passed its order for resale, and had stripped Petitioner of that right to take over the property; there was no longer any need for hurry.

The business was then put up for resale, and the Order for resale permitted Petitioner to again bid on the property. And when Petitioner did bid on the property, at the resale on May 1st, the Receiver then stopped the sale, and merely reported the bids of Respondent, and of Petitioner to the Court. (R. 340.)

Then despite that earlier alleged threatened ruin, unless the business were sold immediately; the District Court, on May 24th, passed still another order giving Petitioner still another 30 days within which to purchase the partnership business.

And then, after the business had been "sold" by the Receiver to Respondent, on June 26th—and despite that alleged threat of immediate ruin, unless the business were sold immediately—the District Court then gave Petitioner a further three and one-half months, to take over the business, by offering 10% more than the price at which it was to be sold to Respondent.

Under these conditions it is obvious that the danger of immediate collapse, unless the business were sold immediately—and as urged by the Receiver in his report to the Court—was merely an excuse for preventing the completion of the purchase by this Petitioner.

The Order for Resale of March 22nd.

On the Report of the Receiver (R. 305) showing alleged default by Petitioner; the District Court, on March 22nd (R. 336) entered an Order for Resale of the property, (R. 339).

Terms of the Order for Resale.

By the terms of that said Order for Resale, (R. 339) the *assets that had been sold to Petitioner, on Feb. 1st, 1944, were ordered resold at Petitioner's risk and cost.* And also, the $10,000 deposit made by Petitioner at the time of the sale, was ordered returned to Petitioner.

Summary Character of the Proceeding Against Petitioner

It will be observed that the said Order for Resale did not set aside the sale, and then order a new sale of the assets of Creel Bros.

Instead the whole theory of that order for resale, was apparently to leave the sale of the partnership business confirmed to Petitioner; and then to order the said assets resold at Petitioner's risk and cost.

And it is from that said order for resale, that was *entered during the course of that said summary proceeding,* against this Petitioner; that the present Appeal No. 8,770 was taken.

Summary Statement of the Subject Matter of Appeal No. 8,823

After entry of the Order for Resale (R. 339) on March 22nd, 1944; the property was again offered for sale, under that said Order for Resale, on May 1st, 1944.

Seemingly, it had been supposed—up to that time; that Petitioner would be afraid to again bid on the property; and so that the partnership property, could then be resold to Respondent.

However, the order for resale was so framed, by a reference to the original order of sale, as to give petitioner a specific right to bid on the property; and to become the purchaser at the resale.

At the said supposed resale on May 1st, therefore; petitioner again outbid, Respondent. And under those conditions, the

Receiver then stopped the sale, and merely took deposits and the bids of the two parties, to report to the Court (R. 340).

Then in seemingly total disregard of statutory provisions; Mr. Justice Goldsborough, on May 24th entered a so-called "Order on the Receiver's petition for instructions." (R. 466.)

This said Order, of May 24th, provided for neither a public nor a private sale; these being the only two forms allowed by statute. Instead, that order provided that Petitioner should have the right, for 30 days, to purchase the property at $240,500; but provided that the purchase be completed within 30 days. *No one however, was authorized to sell the property to petitioner.*

Since Petitioner had a valid appeal pending in No. 8,770; Petitioner refused to attempt to buy the property under that illegal scheme; although the price was supposed to be the same. Instead, Petitioner preferred to rely on his appeal, No. 8,770; and one reason was, that the assets that were supposed to be sold under that order of May 24th, *could not be identified.*

On June 23rd, therefore; and for the purpose of blocking the obviously intended sale to Respondent; *petitioner filed notice of his second Appeal No.* 8,823, as against the "Order on the Receiver's petition for instructions" of May 24th.

Summary Statement of the Subject Matter of Appeal No. 8,910

The aforesaid Order of May 24th, provided further that if petitioner failed to complete the purchase within 30 days, and which would have been an impossibility—that then Respondent should have the right to buy the property at $240,000; provided that Respondent put up a deposit of $10,000; and provided that he completed the purchase, within a further 30 days.

Immediately after the expiration of the 30 days allowed for purchase by Petitioner; *the Receiver then accepted the offer* of Respondent, to purchase the property; and Respondent paid down the $10,000 deposit. (R. 471-476.)

The Receiver was not authorized to accept the said offer. But, nevertheless, the Receiver reported the matter to the Court; although it would have been impossible for Respondent, under the law, to have completed the purchase within 30 days. (R. 471.)

Furthermore, under the Order of May 24th, under which Respondent "purchased" the property, it was physically impossible to identify the assets, supposedly sold to Respondent. And this error continued all through the further proceedings, and including the final confirmation of the sale to Respondent.

Respondent did not of course complete the purchase, within the 30 days, as required by the order of May 24th.

Instead on Aug. 30, 1944; or more than 30 days later (R. 498), an Order Nisi was entered by the District Court. That Order Nisi confirmed *the acceptance of the said offer,* of Respondent, by the Receiver. That Order Nisi further provided, that the said sale to Respondent, should be finally ratified and confirmed, unless cause to the contrary be shown, or a higher offer acceptable to the Court, be made on or before Oct. 9th.

Again it was petitioner's opinion, that that procedure failed completely to conform to the statutory requirements, for either a public or a private sale. And petitioner again refused to make any counter offer, under that Order Nisi, even though an additional $30,000, or $40,000 of profits, had piled up in the business, since the sale to Petitioner, at the bid price of $240,500, on Feb. 1st.

And this appearance of illegality, as a means of chilling the bidding, would again seem, under repeated rulings by this Court, as an all sufficient bar to the validity of the sale to Respondent.

Furthermore, as before stated, the assets supposedly sold to Respondent cannot be identified. (R. 916, par. 30-31.) Also the terms of such sale, if it was a private sale, were never advertised as required by statute. Instead only a copy of the Order Nisi was published, and it merely states that the terms are all cash, subject to the terms of the order of May 24th, and these terms were not advertised.

Finally, it would seem from various decisions of this Court, that it would be held that the specific provisions of the third "subdivision" of Sec. 847, Title 28, U. S. C.; overrules the more general 4th "subdivision," and which last "subdivision" permits a private sale of land. And if the so-called third "subdivision" does control; then any interest in land, *if it is in the hands of a receiver, must be sold at public sale.* (See Appendix A.)

But however, this may be; the irregularity of the proceedings was so great as to completely "chill" any bidding by this Petitioner, despite the accumulated $30,000 or $40,000 of profits, meanwhile.

For this reason among others; petitioner made no competitive offer, under the terms of the Order Nisi; nor did anyone else.

And so, on October 9th, 1944, the sale of the partnership business was finally confirmed to Respondent by the District Court.

It was from that Order Finally Confirming Sale, that Petitioner's third appeal, No. 8,910 was taken.

INTRODUCTION TO QUESTIONS PRESENTED ON APPEAL No. 8,770

RECAPITULATORY NOTE: On March 22nd, 1944, the District Court entered its "Order for Resale" (R. 309); and which said order for resale: (a) Held petitioner in default; (b) ordered the return of the $10,000 deposit to petitioner; and (c) Directed the resale of the property at petitioner's risk and cost.

Appeal No. 8,770 was taken from that order of resale. It should therefore be observed that the requirements for an appealable order, under the D. C. Code are that petitioner *must have been aggrieved thereby;* and that the said order *must either have been a final order;* or, it must have been *an interlocutory order "whereby the possession of property is changed or affected."*

QUESTIONS PRESENTED ON APPEAL No. 8,770

I. Whether the Court of Appeals erred in dismissing appeal No. 8,770 as having been taken from a non-appealable order.

That is:

I-A. Whether the Court below erred in failing to hold: *that petitioner was aggrieved* by the terms of that order; that is (a) because petitioner was thereby stripped of the right to have a business earning $70,000 a year turned over to him; and (b) because the property was then to be resold at petitioner's risk and cost.

I-B. Whether the Court below erred in failing to hold: that the said order of resale *was appealable as a final order:* (a) Under the rule of *Kneeland v. American Loan,* 136 U. S. 89; 34 L. Ed. 379; that is, that a *purchaser at a judicial sale,* acquires thereby a right of appeal against any subsequent order, that adversely affects his interests; or (b) Under the Rule of *Forgay v. Conrad,* 6 How. 210; 12 L. Ed. 404; that an interlocutory order is final and appealable, *if it is immediately executable;* and *if material injury could be caused* to a party thereby.

I-C. Whether the Court below erred in failing to hold, that the said order of resale was appealable, *as "an interlocutory order whereby the possession of property was changed or affected."* That is:

(a) Whether the order for the return of the $10,000 deposit to petitioner, was not a release of a lien on that $10,000, and so that thus the possession of property was affected?

(b) Whether the return of the $10,000 deposit to petitioner, was not also a change in the possession of property?

(c) Whether that order of resale, which held petitioner in default, did not strip petitioner of a valuable property right; this said right being the right to have a property—earning $70,000 a year—turned over to petitioner, on payment of the purchase price?

II. Whether the Court below erred in failing to hold:

(a) *That the said Order for Resale must be set aside and quashed:* because—by reason of the filing of the appeal by petitioner, on March 10th, (R. 298)—from the order confirming sale of the property to petitioner, (R. 283)—all jurisdiction over the subject matter was transferred to the Court of Appeals; and so that the Order of Resale, as entered by the District Court on March 22nd, was wholly null and void; and

(b) Whether the Court below erred in failing to follow in this respect, the applicable decision of this Court in *Newton v. Consolidated Gas,* 258, U. S. 177; 66 L. Ed. 548.

III. Whether the Court below erred in failing to hold that the said order for resale; must be set aside and reversed, as erroneous; because petitioner was not guilty of blameable default, in refusing to complete the settlement under the terms demanded by the Receiver. That is

III-A. That where petitioner had purchased all the assets of the partnership, except cash on hand, the receiver had no authority to demand that petitioner must pay additionally for miscellaneous credits of the partnership, and such as insurance paid ahead and the like.

III-B. That where the order of sale recites, that all questions as to the rights and interest of the partners, in the assets, had been finally determined; the Receiver was not authorized to require, that petitioner must pay to the Receiver, $60,000 to cover costs of the Receivership; when no such claim against petitioner had been determined by the Court.

III-C. That where $35,000 of Receivership costs had been paid from partnership funds—and of which $17,500 had been paid from petitioner's share of the said fund; the Receiver was not authorized to require that petitioner should pay the Receiver over again for that said $17,500.

IV. Whether the Court below erred in failing to hold and direct: that since the *alleged default was not due to any fault of petitioner;* that *the sale of the partnership business to petitioner must be completed;* and that the property must be turned over to petitioner, as of the original sale date of Feb. 1, 1944; and at petitioner's bid price of $240,500; and under the terms of the original order of sale, as those terms should have been properly interpreted by the Appellate Court.

V. Whether the Court below erred in failing to hold and direct that *Respondent must account to the partnership,* for the more than *$65,000 that has been paid him as a so-called salary by the receiver,* during the 12½ years of this receivership.

VI. Whether the Court below erred in failing to hold and direct that the final terms of settlement, by petitioner, for the partnership property, shall be made subject to a proper accounting between the partners as to parnership affairs.

Reasons Relied on for the Allowance of the Writ as to Appeal No. 8,770

I. That all three appeals in this case are so interlocked; that if certiorari is granted in one case it should be granted in all three.

II. That the Court of Appeals for the District of Columbia has, by its decision in this case, placed itself in conflict with the opposing decisions of the Circuit Court of Appeals, for the 3rd and 7th Circuits.

That is, in this case the United States Court of Appeals for the District of Columbia, has ruled that a bidder, at a judicial sale, has no right of appeal, from a subsequent adverse order affecting the said bidder's interests; and the Court of Appeals in this case has cited *Butterfield v. Usher,* 91 U. S. 246; 28 L. Ed. 218, as its authority.

And whereas to the contrary; the 3rd Circuit Court of Appeals in *Investment Registry v. Chicago* (1913), 212 Fed. 594, 603; held that a bidder at a judicial sale has a right of appeal from any subsequent order, adversely affecting his interests; and that Court further held that the case of *Butterfield v. Usher,* above cited, was inapplicable.

And whereas also; the 3rd Circuit Court of Appeals, in *Smith v. Hill,* 5 Fed. 2nd, 148 (1925) upheld the same rule and cited the case of *Investment Registry v. Chicago,* above cited, as corroborating authority.

III. That by dismissing Appeal No. 8770, as having been taken from a non-appealable order; the United States Court of Appeals for the District of Columbia, has failed to follow applicable decisions of this Court; and in that, in this case, the Court of Appeals has ruled:

A. That a purchaser at a judicial sale has no right of appeal, against a subsequent adverse order affecting his interests, and this is contrary to the applicable ruling of this Court, in *Kneeland v. American Loan and Trust Co.,* 136 U. S. 89; 34 L. Ed. 379.

B. That a party to a suit has no right to appeal from an interlocutory order, which is immediately executable, as in this case; and where it might cause irreparable injury to the party affected adversely thereby; and that holding is directly in conflict with the principle laid down by this Court in *Forgay v. Conrad,* 6 How. 210; 12 L. Ed. 379.

IV. That the said Court of Appeals has in this case followed the obsolete rule of *Butterfield v. Usher,* 91 U. S. 248; 23 L. Ed.

318; that an order setting aside a sale and ordering a resale is not appealable; and this is directly in conflict with the principle enunciated by this Court, in *Kneeland v. American Loan and Trust Co.,* 136 U. S. 89; 34 L. Ed. 379.

V. That this Honorable Court should reverse or clarify its holding in *Butterfield v. Usher,* 91 U. S. 246; 28 L. Ed. 218; For the decision of this Court in the said case of *Butterfield v. Usher,* was clearly based on the old English practice, of reopening the bidding, even after confirmation of a judicial sale, for an advance of 10% in the bid price; and that practice is now no longer countenanced by this Court.

The facts are that in that said case of *Butterfield v. Usher,* the bidding was reopened on an assurance by the defendant of a $500 higher bid; and under the added proviso, that the defendant repay to the purchaser 10% interest on the money the said purchaser had invested.

VI. That if Certiorari be granted, and the business be ordered turned over to this Petitioner; this 12½ year old receivership can be terminated; for the sale to Petitioner was a valid public sale; and Petitioner has the express consent of Respondent to the purchase by Petitioner of the Partnership property.

On the other hand, should Certorari be denied; the sale to Respondent cannot be carried through, because the assets supposedly sold to Respondent cannot be identified; and, further, even though the sale should be actually carried out; it would have to be set aside on demand of this Petitioner; or else, this Court would seemingly be compelled to radically revise the law of Fiduciary Relationships, that it has upheld, since the beginning of the Republic.

Respectfully submitted,

EDWIN J. CREEL.

APPENDIX "A" TO PETITIONS ON APPEALS Nos. 8,823, AND 8,910.

Statute Involved.

Following are relevant portions of Sections 847, and 849, Title 28, U. S. C.

SEC. 847, TITLE 28, U. S. C.
SALES OF REAL PROPERTY UNDER ORDER OR DECREE.

(Sub-division I, enacted 1893.)

All real estate or any interest in land sold under any order or decree of any United States Court *shall be sold at public sale,* at the court house of the county, parish, or city in which the property, or the greater part thereof is located, or upon the premises or some parcel thereof located therein, as the court rendering such order or decree of sale may direct; said sale to be upon such terms and conditions as said court shall approve.

(Sub-division II, enacted 1935.)

Provided however, that if *said property* shall be situated in more than one county, state, judicial district of the United States, or judicial circuit of the Unitd States, whether in one or more parcels,

said property shall be sold as a whole, or in separate parcels *at public sale,* at the court house of the county, parish, or city in which the greater part thereof is located or upon the premises of some parcel thereof as the court rendering such order or decree of sale may direct:

(Sub-division III, enacted 1935.)

and provided further, That if, at the time said property is offered for sale, it is in the possession of a receiver or receivers, or ancilliary receiver or ancilliary receivers *appointed by one or*

more District Courts of the United States, said property, wherever situated *shall be sold at public sale* in the district of primary jurisdiction at the court house of the county, parish, or city situated therein in which the greater part of said property in said district is located or on the premises of some parcel thereof located in such county, parish, or city therein as the court having primary jurisdiction, by such order or decree of sale may direct, unless said ourt shall order the sale of the properties, or one or more parcels thereof, in one or more ancilliary districts.

The United States Court having jurisdiction shall be deemed to be the court first appointing any such receiver.

(Sub-division IV, enacted principally in 1934.)

After a hearing of which notice to all interested parties shall be given by publication or otherwise as the court may direct, the court may order and decree the sale of such real estate or interest in land or any part thereof at private sale for cash or other considerations and upon such terms and conditions as the court directing the sale may approve, if it finds that the best interests of the estate will be conserved thereby;

provided, That before confirmation of any private sale, the court shall appoint three disinterested persons to appraise said property, or if the court deems advisable differing groups of three appraised each to appraise properties of different classes or situated in different localities,

and no private sale shall be confirmed at a price less than two-thirds of the appraised value.

Provided further: that before confirmation of any private sale, the terms of such sale shall first be published in such newspaper or newspapers of general circulation, as the court having jurisdiction may direct, at least ten days before confirmation;

and such private sale shall not then be confirmed by said court, where a *bona fide* offer has been made under such conditions as said court may prescribe; which offer shall guarantee at least a

ten percentum increase over the offered price specified in such private sale.

The provisions of this section shall apply to sales and proceedings now pending in the courts of the United States as well as those commenced hereafter.

(Note: It is further provided that Sec. 847 does not apply to sales under Title 11, Bankruptcy, or by conservators appointed by Comptrollers of the currency.)

(As amended June 19, 1934, c. 662, 48 Stat. 1119; April 24, 1935, c. 77, Sec. 1, 49 Stat. 159; June 19, 1935, c. 276, 49 Stat. 390.) *(Subdivisional headings and italics added.)*

SEC. 849, TITLE 28, U. S. C.
SAME: NECESSITY OF NOTICE.

No sale of real estate, ordered pursuant to Sev. 847 of this Title, by any order, judgment, or decree of any United States court, other than a private sale, shall be had without previous publication of notices of such proposed sale being ordered and had once a week for at least four weeks prior to such sale in at least one newspaper printed, regularly issued, and having a general circulation in the county, state, judicial district of the United States, or judicial circuit of the United States, where the real estate proposed to be sold is situated, if such there be.

(If said property shall be situated in more than one county, etc., such notice shall be published in one or more of the counties, etc., where said property is situated, as the court may direct.)

Said notice shall be substantially in such form and contain such description of the property by reference or otherwise, as the court ordering the sale may approve. * * *

The provisions of this section shall apply to sale and proceedings now pending in the courts of the United States as well as to those commenced hereafter.

(Provisions of this Section do not apply to sales under Title 11, Bankruptcy, or by receivers or conservators appointed by the Comptroller of the Currency.)

(As amended Apr. 24, 1933, c. 77, Par. 3; 49 Stat. 163; June 19, 1935, c. 276, 49 Stat. 390.)

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

Nos. 587, 588, 589.

EDWIN J. CREEL
Petitioner

vs.

ROBERT T. CREEL
Respondent

REPLY BRIEF BY PETITIONER AND AFFIDAVIT IN SUPPORT THEREOF

EDWIN J. CREEL,
in proper person.

INDEX

I.

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Respondent

REPLY BRIEF BY PETITIONER

To the Honorable, The Chief Justice and Associate Justices of the Supreme Court of the United States:

Your Petitioner, Edwin J. Creel, respectfully submits the following as his Reply, to the Brief in opposition, as filed herein by Respondent, on November 29, 1945.

The Gross Falsification of Respondent's Brief.

As more fully set out later on herein, Respondent's Brief is a maze of inexcusable falsifications; and in particular of vicious attempts to "smear" this Petitioner, by falsification of Petitioner's statements of legal authorities.

Petitioner charges that Respondent's Brief is also a maze of further contemptuous falsification of authorities, and of supposedly clever "double talk"; and both of which—in Petitioner's opinion—were clearly intended to trick and deceive the Court.

Some of the more glaring of these falsifications by Respondent will presently be set out as a preliminary matter. The remainder will then be set out in somewhat great detail, later on in this Reply.

The Admissions and Claims of Respondent's Brief.

In addition to the above mentioned falsifications, Respondent has also made a number of admissions and claims; and these said admissions and claims not only serve to clarify the issues; but they also show that the analysis of controlling issues—as set out in Petitioner's substitute Petition, pp. 14-18—is fully as conclusive as is there indicated.

A summary outline of these said admissions and claims by Respondent will presently be set out; and that outline will then be followed by a more detailed analysis of their bearing on the actual facts of the case.

Before taking up this direct reply to Respondent's Brief on the merits; Petitioner asks consideration of certain preliminary matters as follows:

Reference to Supporting Affidavit.

As set out in *General Excavator v. Keystone*, 290 U. S. 240, this Court has always upheld the rule, that it would deny its aid to any party who has been guilty of unconscionable conduct in

relation to the subject matter of the suit. And although Petitioner has found no specific references on the matter, it appears that the Court considers the question of unclean hands to be a matter that may affect its jurisdiction as a Court of Equity, to act in the matter at all.

As a jurisdictional matter, it appears that evidence of unclean hands of a party, can be introduced by affidavit in an appellate court, under the rule of *County of Dakota v. Glidden,* 113 U. S. 222; 28 L. Ed. 981; and as appears to be even more definitely authorized by the following quotation from *Walter v. Walter,* 15 D. C. App. 345:

> "It is a maxim of equity that he who seeks the intervention of a court of equity must come in with clean hands. The application of the maxims of equity does not stop with the adjudication of right, it extends as well to the remedy, and at any and every stage of a cause, a court of equity may stay its hand, whenever it appears that it would be inequitable to proceed further." *Walter v. Walter,* 15 D. C. App. 345.

Most of the falsification of which Respondent has been guilty in his brief; is based on facts that are set out in the 929 page record in this cause; and most of which said record has been brought up by Petitioner for that very reason.

However, a further considerable amount of falsification of Respondent's Brief is a falsification of facts that have developed since the record was made up in the District Court; and such for example as the statement that Petitioner does not want to purchase the business, but only wants to keep the receivership in operation because of a spite against Respondent; and whereas since the date of the sale to Petitioner on February 1, 1944, the business has earned in excess of $175,000, and its net worth is now estimated to be in excess of $525,000.

The total cash on hand and in the firm's bank balance is now in excess of $225,000 on the average, with all bills paid. And

for Respondent to claim, as he does in his brief, that Petitioner does not want to take over that $525,000 business by paying Respondent a portion of that $225,000 bank balance, is simply willful and inexcusable falsification of the part of Counsel for Respondent.

And for Counsel to say—as he does on p. 7 of his Brief—that Petitioner was not aggrieved by being stripped of the right to take over the business, when it has not been disputed that the business has been earning over $70,000 a year as stated by Petitioner in open Court (R. 462), is a further inexcusable falsification by Counsel for Respondent.

Of course the above figures can be arrived at approximately by an estimate based on facts shown by the record. It is Petitioner's opinion, however, that they can better be shown by a supporting affidavit, introduced in this Court under the unclean hands rule, and as is indicated by the quotation from *Walters v. Walters,* as above set out.

Certain other facts, however, cannot be thus shown by the record.

For example, it has been discovered, since the record was made up in the Court of Appeals, that the great bulk of the District Court records in the case—and these constituting a pile nearly five feet high—have been criminally hidden, or criminally stolen or destroyed.

And since this destruction of Court records is merely the last, of several open or concealed attempts to keep hidden the fraud that is being carried on in this case, it is Petitioner's opinion, that these further facts can properly be shown by supporting affidavit, and as is filed by Petitioner in connection herewith.

And if the Court is of the opinion that these matters cannot be introduced in this Court by affidavit, then Petitioner prays that the Court suspend action on this Petition; and that Petitioner be given an opporunity to introduce these matters by affidavit in

the District Court; and to then have them brought up to this Court by certiorari, in the more usual fashion.

Reference to Substitute Petition.

There is now pending before the Court a motion by Petitioner for permission to file a substitute 44 page Petition for writs of Certiorari, in lieu of the incomplete 30 page Petition, as filed originally in this Court on November 5, 1945.

As set out more fully in that said motion; the circumstances which necessitated the filing of that motion are as follows:

1. It is Petitioner's opinion that certain of Petitioner's inventions, and certain of Petitioner's scientific discoveries are now of immense importance to the National reconversion and Post-war programs.

2. On the sudden collapse of Japan last August, it seemingly became apparent that one—or really a group—of Petitioner's shipping inventions, would be of immense importance to the determination of the question, as to the disposition to be made of our 40,000,000 tons of excess merchant shipping.

3. In an effort to bring out that invention ahead of these petitions, Petitioner found it necessary to ask for a 30 day extension of time to file these said petitions. Then, on the release of further information as to the claims for the Atomic bomb, it became apparent that the said shipping invention might be of even greater importance, to the determination of the question as to the size and character of our post-war navy.

4. Because of this added complication, it became necessary for petitioner to ask for a second 30 day extension. Then in a final effort to bring out that said invention ahead of this Petition; Petitioner cut his time too short for preparation of his said petitions.

5. Petitioner had planned on filing three separate petitions for the three appeals. Because of the shortness of the remain-

ing time, Petitioner changed his plans, so as to try to file but two petitions covering the three appeals. But, because of the immense complexity that has been brought about by the falsification of law and of fact by Counsel for Respondent, and as is set out more particularly in this reply, Petitioner found it impossible to complete his two said petitions within the remaining time. Petitioner then changed his single petition on Appeal No. 8,770, so as to make it cover, at least partially all three appeals; and Petitioner relied then on the fact that this Court will seemingly consider questions which affect the jurisdiction of this Court, or of the Court below—and whether assigned or not.

6. Because of the many changes in plan, petitioner found it then impossible to complete even that single petition within the remaining time. Petitioner thus filed an incomplete and uncorrected copy of that said single petition. Petitioner then had run off a further 50 corrected copies.

7. Then, on November 15th, Petitioner served a copy of both the original and of the corrected petitions on Counsel for Respondent. Petitioner asked consent of Counsel to substitute the corrected copy for the original uncorrected copy on file in the Court.

8. Counsel refused his consent; and Counsel then further made his own brief a veritable maze of falsification, and of deliberate attempts to trick the Court, by falsification of facts, and of authorities; and by attempts to conceal the crucial bearing of Petitioner's appeal of March 10, 1944, on the principal issues in the case.

9. Under these conditions it became necessary for Petitioner to prepare a substitute petition, to meet that added load of falsification. However, Petitioner was informed that the Court was expected to act on the Petition on December 15th. It was necessary for Petitioner to have that printing done out of town; and—because of traffic conditions—and the crowded conditions in the printing trade—Petitioner found it impossible to fully

revise and complete that said substitute Petition by December 14th.

10. It has thus became necessary for this present reply to carry a considerable part of the load of meeting the extreme falsification of which Counsel for Respondent has been guilty in his said brief.

11. The original and substitute Petitions are substantially equivalent, except that an amplified statement of fact, as to Appeal No. 8,770, and a preview of the more controlling issues as to all three appeals; and an appendix setting out the text of Sec. 847, have been inserted in the revised 44 page Petition. By error, however, the section on variance as the principal ground of the appeal of March 10th, was omitted from the revised Petition.

12. And should the Court consider it inadvisable to grant permission for substitution of that said revised 44 page petition, for the original 30 page petition; then Petitioner respectfully prays, that the Court consider that said 44 page revised petition as a part of Petitioner's present reply brief; if the Court considers such a request to be proper under the circumstances.

Preliminary Statement as to Falsification by Respondent of Petitioner's Statement as to Sec. 847.

As a preliminary matter, the attention of the Court is called to the inexcusable falsification to which Counsel for Respondent has resorted on pp. 13 and 14 of his brief; and where he has willfully falsified Petitioner's statement as to Sec. 847, Title 28, U. S. C.; and to the effect that Petitioner made a "new claim" that Sec. 847 prohibited the judicial sale of real estate at private sale.

The facts are of course that the fourth "sub-division" of Sec. 847, was enacted in 1934, for the specific purpose of authorizing a private sale of real estate.

What Petitioner really claimed, on p. 10 of the original petition (or page 16 of the substitute), is that it appears from rules long established by this Court (*U. S. v. Chase,* 135 U. S. 255, 260; 34 L. Ed. 117), that the more general provisions of the 4th "sub-division" of Sec. 847, Title 28, U. S. C., which authorizes a private sale of real estate; is apparently overruled by the third, and more specific "Sub-division"; which requires that any interest in land, that is sold under order or decree of any U. S. Court, *must be sold at public sale, if it is in the hands of a Federal receiver, at the time it is offered for sale.*

It appears that this question has never been passed upon by any court. In *Prudential Ins. Co. v. Land Estates,* 19 F. Supp. 401, however, the Court seemingly approved the construction contended for by Petitioner; but, in that case, the Court ruled that the provision was inapplicable, because the sale in question was not a judicial sale.

In any event, it is clear—in Petitioner's opinion—that that misquotation by Counsel for Respondent, was a deliberate falsification.

Falsification by Respondent of Petitioner's Statement of the Rule of Forgay v. Conrad.

The attention of the Court is called to a further willful falsification by Counsel for Respondent of Petitioner's statement of the rule of *Forgay v. Conrad,* as set out on p. 23 of the original petition, or p. 36 of the substitute.

As there stated by Petitioner, that rule is "that an interlocutory order is final and appealable, if it is immediately executable, and if material injury could be caused to a party thereby. Counsel for Respondent has falsified Petitioner's statement of that rule, by changing the "and" to "or"; and so that it would appear that Petitioner had said that the rule of *Forgay v. Conrad* was "that an interlocutory order is final and appealable if it is

immediately executable, OR where it might cause irreparable injury to the party affected thereby.

And in Petitioner's opinion, this too was a deliberate falsification.

Respondent's Falsification of Petitioner's Statement of "Questions Presented."

The attention of the Court is further requested to the willful falsification by Respondent in his brief, of the questions presented by Petitioner.

For on page 5 and 6 of his brief he states that it is very difficult to determine what questions Petitioner desires to present on pages 23 to 26 inclusive of the original Petition.

He then proceeds to falsify the list of questions presented by Petitioner, by leaving out the major questions by Petitioner, and substituting therefor a list on which it is reasonably certain a writ of certiorari would not be granted.

Respondent's Falsification of the Rule of Bronson v. LaCrosse.

The attention of the Court is further requested to the falsification by Counsel for Respondent, of the rule of *Bronson v. LaCrosse, I Wall.* (68 U. S.) 405, 411; 17 L. Ed. 616, 618.

Counsel cites that case as supposed authority for a rule; that while an appeal is pending, the District Court retains all power necessary to preserve and protect the property in dispute, even to the extent of selling out and finally disposing of the subject matter of the pending appeal.

It is Petitioner's opinion that that mis-citation was a deliberate contempt of the Court.

For Counsel was well aware, that that decision which he cites as authority, for the sale, by the District Court, of the subject matter of a pending appeal, *was actually handed down on a*

petition for a writ of prohibition, to be directed to the District Court, and for the purpose in part of preventing that court from passing orders, affecting the subject matter of a pending appeal.

In that case, this Court said that, *as the Court below needed but to be advised, of the opinion of this Court, the writ of prohibition would be withheld.* And now Counsel for Respondent cites that case as authority, for his contention that the District Court retains jurisdiction over the subject matter—not merely to pass relatively minor orders as in *Bronson v. LaCrosse*—but actually to dispose of the entire subject matter of the appeal.

Scheme for Orientation.

As a further preliminary to a consideration of the aforesaid claims and admissions made by Respondent—and to a recapitulation of the principal facts as to the three appeals, as they relate to the said admissions and claims by Respondent; it should be noted that although only three appeals are covered by this petition; a fourth and prior—but later dismissed—appeal of March 10th (R. 298), is of crucial importance to any consideration of the three appeals that were brought up.

It is Petitioner's opinion that the Court will find it helpful—toward keeping in mind the relationships of these said four appeals—if the following scheme for orientation is adopted.

That is, it should be considered that the said four appeals actually constitute two largely distinct "Cases"; and which said cases will be referred to as Case I and Case II.

It should then further be considered, that each of these said "Cases," is made up of both a "Main" appeal, and also a prior "anticipating" or "blocking" appeal.

PETITIONER'S "CASE I" thus consists of a "Main" Appeal No. 8,770, and a prior "blocking" appeal, not numbered, but which will be referred to as "the appeal of March 10, 1944."

The purpose of Petitioner's said "Main" appeal No. 8,770 is —as stated—to have reversed or quashed, an Order for Resale

(R. 339), that was entered by the District Court—on March 22, 1944—against this Petitioner, as an alleged defaulting purchaser.

Petitioner also asks—as before stated—that this Court then decree that the business be turned over to Petitioner, at Petitioner's bid price of $240,500—and as of the original sale date of February 1, 1944—and under the terms of the original Order of Sale (R. 231), and as those terms might be properly interpreted by this Court.

PETITIONER'S "CASE II" consists of a "Main" Appeal No. 8,910, and a prior "blocking" Appeal No. 8,823.

The purpose of this second "Main" Appeal No. 8,910 is to have reversed and quashed, an order of the District Court of October 9, 1944, and which said order purported to finally confirm the sale of the partnership business to Respondent at a bid price of $240,000, and as of a sales date, of May 1, 1944.

Reference to the Chronological List of Principal Events of the Three Appeals, as Set Out in Appendix "B."

As a further possible aid to the Court, in considering the interrelationships of the four appeals involved in this case, Petitioner has included, as Appendix "B" to this Brief, a chronological list of the principal events underlying the three appeals in this case; and as to their relationship, to the unnumbered, but highly important appeal of March 10, 1944. (R. 298.)

THE CLAIMS AND ADMISSIONS OF RESPONDENT'S BRIEF, AND PETITIONER'S REPLY THERETO

As stated, Respondent's Brief, as filed herein on November 29th, contains a number of admissions and claims; and many of which are—in Petitioner's opinion—fatal to the contentions of Respondent.

In the following outline, of the more important of those said admissions; references will generally be made to the record and to the appropriate page number in the accompanying Appendix "B."

Item 1.

As Item 1, it now stands admitted on the record, by Respondent, that Petitioner's appeal of March 10, 1944 (R. 283) was a valid appeal; and that consequently jurisdiction was transferred to the Court of Appeals as of March 10, 1944, and so that the Order for Resale (R. 339) was wholly illegal and void.

And this is true, because nowhere in his said brief, does Respondent question the validity of that said appeal of March 10th, except by inuendo and "double talk." Furthermore, it is apparent that Respondent has made strenuous efforts to try to cover up and conceal from the Court, the existence and identity of that said Appeal of March 10th.

Thus as Question II (a) on p. 24, of the original petition, Petitioner advanced in question form, the precise contention set out above. That question is as follows:

> "Whether the Court below erred in failing to hold (a) that the said Order for Resale must be set aside and quashed because—by reason of the filing of the appeal by Petitioner, on March 10th (R. 298), from the order confirming sale of the property to Petitioner (R. 283); all jurisdiction over the subject matter was transferred to the Court of Appeals; and so that the Order for Resale, as entered by the District Court on March 22nd is wholly null and void; and
>
> (b) Whether the Court below erred in failing to follow in this respect, the applicable decision of this Court in *Newton v. Consolidated Gas,* 258 U. S. 177; 66 L. Ed. 548."

On page 6 of his brief, Respondent attempts to evade that question by making the false assertion that Petitioner's "Ques-

tions Presented" cannot be understood. Respondent therefore restates that said questions II(a) so as to make it wholly unintelligible, as follows:

> "(1) That at the time each of the orders was signed by the District Court, there was pending in the Court of Appeals, an appeal from a prior order and, consequently, the lower Court had no jurisdiction to pass any of the orders of which he complained."

The total amount of reference to that important appeal of May 10th, in the brief for Respondent, is as follows:

> p. 4. "Immediately (after the sale of February 1st to Petitioner) the sale was confirmed to Petitioner with the consent to Respondent (R. 283). Petitioner appealed to the United States Court of Appeals for the District of Columbia from this Order confirming the sale to him on his own bid, which appeal was subsequently dismissed by that Court on May 12, 1944."

> p. 6. "He (Petitioner) was always of the opinion that by noting an appeal from any order of the District Court, even though in his favor (like the one confirming the sale to him), he could oust the District Court of jurisdiction pending the disposition of his successive appeals, and thus prolong the litigation endlessly."

The appeal of March 10th, from the Order confirming sale to Petitioner, was the first of the four appeals involved in this petition. Respondent referred to that appeal of March 10th in the paragraph just quoted; but in the next paragraph below, Respondent refers to the Order of Resale of March 22nd, as the first of Petitioner's appeals, and as set out below:

> p. 6. "His first two appeals did not "block" the sale or oust the lower Court of jurisdiction for the following reasons:
>
> (a) The first two orders were not final orders as they

required confirmation. As long as confirmation is required, in an order for sale or resale, that order is not a final order."

It will be thus seen that in the first paragraph of his argument, Respondent speaks of Petitioner's appeal of March 10th, and then in the next paragraph he refers to Petitioner's appeal of March 22nd, as Petitioner's first appeal. Obviously such a reference was intended only to deceive the Court.

Respondent's next reference to the Appeal of March 10th is at the bottom of page 7 of his brief where he says:

p. 7. "He (Petitioner) then appealed from the order of resale. At that time there was also pending in the Court of Appeals his appeal from the order confirming the sale to him. Notwithstanding, the fact that these two appeals were pending, the Petitioner attended the resale and endeavored to purchase the property offered for sale by bidding therefor, an action entirely inconsistent with the two appeals noted by him before the resale."

"His action indicated that both of his appeals were abandoned and that the order of resale was a valid effective order, under which the Petitioner was willing to and would take title if his bid was accepted."

Counsel here makes the willfully false argument that Petitioner's bidding at that said resale of May 1st, indicated that Petitioner's two appeals were abandoned; and whereas the facts were that immediately preceding that said resale, Petitioner handed to the Receiver a five page letter (R. 362-367) in which Petitioner specifically notified the Receiver that Petitioner was accepting return of the $10,000 deposit, as being necessary for the protection of Petitioner's interests; and without prejudice to Petitioner's right to contest the validity of the said order for resale on appeal. And on page one of that letter (R. 362) Petitioner stated:

"I do not in any wise acknowledge the legality of the Court's order of March 22nd, in declaring myself in default,

and in ordering the resale of the property, and either at my expense and cost or otherwise."

And on the last page of that letter which was handed to the Receiver, immediately preceding that said resale of May 1st, Respondent notified the Receiver that he had just noted an appeal from that said order for resale.

Respondent's argument therefore, that Petitioner's action indicated that Petitioner was abandoning his two appeals is unqualifiedly false.

It will further be noted that Respondent still makes no claim that Petitioner's appeal of March 10th was not a valid appeal. For even though Respondent's claim that Petitioner had abandoned his appeal were true; that would be ground only for asking the dismissal of that appeal in the Court of Appeals. And any such so-called abandonment would do nothing whatever to return jurisdiction of the subject matter, of that appeal, to the District Court.

Furthermore, it is well settled that no estoppel against a party, or abandonment of a right of appeal, arises from any act that it was necessary for the party to take for the protection of his own interests. The authorities on the question of such estoppel are set out in the record (R. 857-858) and are summarized in the following quotation from Corpus Juris:

> Appeal and Error, Par. 212; 4 C. J. Secundum, p. 339. "A waiver is not implied from acts done or measures taken by an appellant in defense of, and to protect his rights or interests (cases) as where for such purpose he purchases property ordered to be sold by the judgment or decree . . ."

The final reference of Respondent to that appeal of March 10th, is on page 14 of his brief, where Respondent refers to the objection of Petitioner that there was a variance between the terms of the Order for Sale, and those of the Order confirming sale to Petitioner. That variance was the major ground for Petitioner's appeal of March 10th, against the order of February

9, 1944, which confirmed the sale of the partnership business to Petitioner. (R. 283.)

At the close of the top paragraph, on p. 15, however, Respondent again attempts to deceive the Court by saying: "What difference does it make, who executes the deed as long as the purchaser accepts title, and pays the purchase money." This last is clearly an attempt to deceive the Court into the belief that Petitioner's objection was to a variance in the terms of the Order of October 9th, which confirmed the sale of the partnership business to Respondent.

Petitioner's objection, however, was to a variance in the terms of the Order of Confirmation to Petitioner, on February 9, 1944, and the difference that variance made, was that Petitioner, as the purchaser, would not accept the deed if executed by the Receiver.

It is thus seen that throughout his entire brief, Counsel for Respondent has made no claim that the Appeal of March 10th, was not a valid appeal. He has, however, rephrased, and misstated Petitioner's "Question II (a)" to attempt to confuse the Court as to the bearing and importance of that said appeal of March 10th.

And at the foot of page 6, he has claimed that Petitioner's first two appeals, did not "block" the sale; but there he is referring to the Order for Resale of March 22nd, as the first appeal by Petitioner, and whereas the actual first appeal of the series, was this said appeal of March 10th.

It follows therefore that Respondent's brief stands as an open admission of the validity of that said appeal of March 10th (R. 298), and so that consequently, the Order for Resale, as entered by the District Court, on March 22nd—or ten days later —was wholly illegal and void.

Item 2.

As Item 2, of his said admissions, Respondent admits that his claimed authority for the exercise of jurisdiction by the District

Court, in entering its Order of Resale of March 22nd (R. 339) was that the Receiver claimed the business was in danger of immediate collapse, unless a sale could be closed immediately.

Respondent claims further that under those conditions—and under the rule of *Bronson v. LaCrosse,* 1 Wall (68 U.S.) 405, 411; 17 Law Ed. 616, 618, the District Court retained jurisdiction to do anything necessary to preserve and protect the assets of the business, even if that included selling out and finally disposing of, the subject matter of the appeal.

As already pointed out, however, the decision in *Bronson v. LaCrosse* was handed down on a petition for a writ of prohibition, to stop the District Court from entering orders affecting the subject matter of an appeal, after the jurisdiction of the District Court had been ousted by that said appeal. And this Court withheld the writ, only because a mere intimation that the District Court had exceeded its jurisdiction, was considered to be sufficient.

It follows that Respondent's claimed authority for the right of the District Court to enter that order of resale, while Petitioner's appeal of March 10th was pending, was not merely non-existent, but actually the cited decision was exactly to the contrary.

It thus stands admitted on the record, so far as Respondent's brief is concerned, that not only was Petitioner's appeal of March 10th a valid appeal, but also that there was no authority whatever, for the entry of the Order for Resale by the District Court on March 22nd, while that said appeal of March 10th was pending.

Item 3.

As Item 3, Respondent makes another fatal admission when he says on p. 16 of his brief, that an indulgent District Court had twice given Petitioner an opportunity to purchase the business, at the figure Petitioner himself had set.

But that claim is an open admission, as to the falsity of the Receiver's claim, that it was necessary for the District Court to

order an immediate resale, in order to prevent its total collapse of the business.

For the facts were that after that Resale was ordered; Petitioner had the right to bid on the property under the Order for Resale, and which said Resale was to be held five weeks later. Then despite the alleged danger to the business if there were any danger of its purchase by Petitioner; the Court on May 24th, gave Petitioner still another 30 days, in which to purchase the business. And finally, by the Order Nisi (R. 498), Petitioner was given until October 9th to become the purchaser, by merely offering a 10% increase in the sale price. And all of this shows that the alleged grave danger of collapse of the business, unless a sale could be immediately closed, was merely flat perjury on the Receiver's part.

Item 4.

As Item 4, Respondent asserts on page 7 of his brief that "As long as confirmation is required in an order for sale or resale, that order is not a final order. It is only an order confirming a sale that is appealable.

In this respect Counsel for Respondent is in conflict with the 7th and 3rd Circuit Courts of Appeals. For in *Investment Registry v. Chicago* (CCA 7th, 1913) 212 F. 594-603; the 7th Circuit held:

> "A decree setting aside a sale on foreclosure and ordering a resale confessedly does not end the case—that continues with all the parties that were in it before the sale.
>
> "But the bidder at the sale becomes a new party; the acceptance of his bid gives him the rights of a purchaser unless legal objections to a confirmation can be shown; and the decree which put him out of court as a party, and terminates his asserted rights as a purchaser, appears to us very clearly a final decree as to him.

"No difference is perceived by reason of the fact that he may have been a party to the foreclosure issues. In the capacity of a purchaser he certainly first became a party when the property was struck off to him at the sale.

"To say that the successful bidder at the first sale may become the purchaser at the second or subsequent sale, seems to us no answer. He may not. And the finality of a decree is to be determined by its own force, not by contingencies outside the record.

"We find nothing in *Butterfield v. Usher,* 91 U.S. 246; 28 L. Ed. 218, relied on by appellee, to require a different conclusion; and the numerous cases respecting confirmation, may rightly be taken to indicate the general opinion of the profession that decrees granting or denying confirmation, are appealable as final decrees."

And in *Smith v. Hill,* 5 F. 2nd, 188 (CCA 3rd, 1925) this same rule was upheld; and the case of *Investment Registry,* above quoted, was cited as authority, for the rule that an appeal lies from either an order confirming, or refusing to confirm, a judicial sale.

Item 5.

As Item 5, Counsel's alleged rule that it is only an order confirming sale that is appealable; brings him into conflict with the Supreme Court in *Kneeland v. American Trust and Loan Co.,* 136 U.S. 89; 34 L. Ed. 379; for in that decision this Court said:

"It was adjudged in *Blossom v. Milwaukee,* 68 U.S. (1 Wall.) 655; 17 L. Ed. 673; that a bidder at a marshal's sale makes himself thereby so far a party to the proceedings, that for some purposes he has a right of appeal. It was said by Mr. Justice Miller, in the opinion of the Court, that . . . 'A purchaser or bidder at a master's sale in chancery subjects himself quod hoc, to the jurisdiction of the Court,

and can be compelled to perform his agreement specifically. It would seem that he must acquire a corresponding right to appear and claim, at the hands of the court, such relief as the rules of equity proceedings entitle him to.' "It follows from this decision that *his right of appeal* must extend to all matters adjudicated after his bid, which affect the terms of that bid, or the burdens which he assumes thereby, and which are not withdrawn from his challenge, by the terms of the decree under which he purchases."

The alleged rule of Counsel for Respondent thus has no backing, except that it is a misinterpretation by Respondent of the ruling in the obsolete case of *Butterfield v. Usher,* 91 U.S. 246; 28 L. Ed. 218.

Item 6.

As Item 6, Counsel for Respondent admits that his sole support for his alleged rule, that only orders confirming sale are appealable, is the obviously obsolete case of *Butterfield v. Usher,* 91 U.S. 246; 28 L. Ed. 218.

For *Butterfield v. Usher* was merely a case under the old and obsolete rule that the bidding would be reopened after a judicial sale, on an offer of a 10% increase in the bid. Furthermore, under the old rules of equity, the Court held full power over its decrees until the end of the term; or even beyond, if a suitable order were made extending the time.

Usher the defendant, secured a prospective purchaser who was willing to make a $500 increase in the bid, on a piece of property the sale of which had already been confirmed to Butterfield. On Appeal, the sale to Butterfield was set aside, on the offer of the $500 increase in the bid; and on the further condition that Usher repay to Butterfield 10% interest on the money Butterfield had invested.

That procedure of reopening the bidding for an increase in the bid, has long been obsolete in this country. The citation of that

case as an authority under the totally different conditions of today, is therefore merely a mis-citation of authority.

Item 7.

Respondent claims that the supposed later sale to Respondent, was a continuation of the public sale of May 1, 1944, under the order of resale of March 22, 1944 (R. 339). On page 14 of his brief, he says:

> "Furthermore, the sale was a continuation of the second sale at public auction, held on May 1, 1944, under the order for resale of March 22, 1944.
>
> "At that sale, a controversy arose between the only two bidders (Petitioner and Respondent) as to which bid should be accepted.
>
> "At the hearing on the Receiver's report of the circumstances giving rise to such controversy, the Court rejected both bids and stated the terms on which the bidder could purchase.
>
> *"This was but a continuation of the public sale."*

What Respondent is really claiming is, that after a sale of real estate has been advertised at public auction, for four weeks as required by Sec. 849, that then the Court can reject the bids offered at the sale; and that the Court can then proceed to sell the business to anyone the Court chooses, and in any manner the Court may decide on.

No such procedure is authorized by Sec. 847, of Title 28, USC. For that section provides (as regards public sale) that

> "All real estate or any interest in land sold under order or decree of any United States Court, shall be sold at public sale, at the Court house . . . or upon the premises . . . as the Court rendering such order or decree of sale may direct.

Sec. 849 provides:

> "No sale of real estate, ordered pursuant to Sec. 847 of

this Title, . . . other than a private sale . . . shall be had without previous publication of notices of such proposed sale being ordered and had once a week for at least four weeks prior to such sale . . ."

Obviously the sale to Respondent did not comply with the requirements of Sec. 847, for the sale was not at public auction; it was not made at the Court house; nor upon the premises as the Court had directed; nor was the time and place of such sale advertised for four weeks prior to the said sale to Respondent as required by Sec. 849.

Item 8.

As Item 8, Respondent's claim that the sale to Respondent was merely a continuation of the public sale of May 1st, under the Order of Resale of March 22nd, brings the Court of Appeals decision in this case, squarely into conflict with the decision of the Circuit Court of Appeals for the Eighth Circuit (1935) in *Bovay v. Townsend,* 78 F. 2nd, 343.

For in this last case, the Eighth Circuit held that the sole power of a District Court, in a public sale, under Section 847, is to confirm the sale as made at auction, or to set it aside and to order another public sale.

Item 9.

As Item 9, Respondent's claim that the sale to Respondent was merely a continuation of the sale of May 1st, under the order of Resale of March 22nd; is another fatal admission; for the assets that were to be resold under the Order for Resale of March 22nd, cannot be identified as of May 1st, the date of the supposed sale to Respondent, and since the assets supposedly sold to Respondent cannot be identified, as of May 1st, the sale to Respondent cannot be carried through in any event.

And since this is a matter of crucial importance to Respondent's whole case, Petitioner submits the following further analysis of the matters involved.

Relevant Text of the Order for Resale

The significant portions of the text of the Order for Resale, of March 22nd, 1944 (R. 339), are as follows:

Order for Resale

> It appearing . . . that Edwin J. Creel, the purchaser of *the assets of Creel Brothers sold by Erskine Gordon, Receiver herein, at public auction on Feb.* 1, 1944, has defaulted . . . it is, by the Court this 22nd day of March, 1944, Ordered . . . that said Receiver is hereby *authorized and directed to resell said assets* at public auction, under the Order for Sale of August 31, 1942, at the risk and cost of said defaulting purchaser, Edwin J. Creel." (Italics added.)

Identification of the Assets That Were to Be Resold at Petitioner's Risk and Cost.

From the above condensation of the Order for Resale, it will be seen that the assets to be resold, were not the *assets of Creel Brothers as of a new sales date.* Nor was Petitioner to be held liable, for the *difference in the proceeds of the two sales.*

Any such arrangement would have been preposterous on its face. For $130,000 *or more of merchandise might have been sold out of the merchandise stock between the original sale to Petitioner, and the resale to the new purchaser.* And *the great bulk of the* $30,000 *of accounts receivable, might have been collected, and the proceeds disposed of.*

This would have left a mere hollow shell of a business to be sold; and there might have been a loss of $100,000 or more to be assessed against Petitioner, as "loss on the resale." Obviously *no such proposal was ever intended or contemplated.*

To the contrary therefore, it may be seen, from the last paragraph of the said Order for Resale (R. 339), that the Receiver is authorized and directed, to *resell the "said assets";* that is,

the assets that were specifically referred to, in the first paragraph of that said Order for Resale.

And in the first paragraph of that said order (R. 339), it is specifically stated that *the "said assets" are: "the assets of Creel Brothers sold by Erskine Gordon, Receiver herein, at public auction on Feb. 1st, 1944."*

In other words, *the assets that were to be resold, under that said order for resale of March 22nd, were the assets that had been sold to Petitioner on Feb. 1st, 1944.*

It is true that those assets of the business, as of Feb. 1st, 1944, cannot now be identified. But, if Petitioner is permitted to take over the business; there would be no need for any such identification.

For Petitioner would then be merely reassuming his contract as of Feb. 1st, 1944; and the only difference would be that there would be a longer period between the time of confirmation of sale to Petitioner, and the time at which Petitioner would make settlement for the purchase.

The Receiver in such case would merely turn over to Petitioner, either the remainder of the original assets, or their proceeds, less disbursements meanwhile; and as is called for by the original order for sale.

And thus, all the Receiver would need to do, would be to take out the amount of cash to be held out, as of Feb. 1st, 1944; and to then turn over, all the rest of the business, and of all subsequent proceeds (less disbursements) to Petitioner.

There would thus be no difficulty as to identification of the assets sold, if Petitioner is permitted to take over the business.

Impossibility of Any Identification of the Assets, if the Sale to Respondent Is Upheld.

The matter is altogether different, however, if any attempt is made to complete the sale to Respondent. For the assets that

were supposedly sold to Respondent were the same assets that were offered for sale on May 1st, *under the order for Resale of March 22nd* (R. 467). And those said assets were the assets that were sold to Petitioner on Feb. 1st, 1944.

The difficulty is, however, that those assets of Feb. 1st, were not sold to Respondent as of that date. On the contrary, those assets of Feb. 1st, were resold to Respondent as of May 1st; and the Receiver was authorized to account to Respondent for the proceeds, only after May 1st. (R. 467.)

But between the two sales dates of Feb. 1st, and May 1st, an estimated $130,000 of merchandise was sold out of the $100,000 merchandise stock. And between those two dates, the $30,000 of accounts receivable, had probably been collected twice over; and the amount of the accounts receivable, had been reduced between the two dates by approximately $6,000.

No inventory was taken of the assets as of Feb. 1st; and no inventory was taken as of May 1st; for the appointment of the appraisers was not even authorized until June 29th (R. 496), and their "Appraisal" report was not filed until August 30th. (R. 497.)

The facts thus stand that the assets supposedly resold to Respondent, were the assets that had been sold to Petitioner on Feb. 1st. And those same assets of Feb. 1st, 1944, being then sold to Respondent as of May 1st, 1944; cannot be identified as of May 1st. In consequence, the sale to Respondent cannot be carried out; and even though illegal and void, for so many other reasons, as presently pointed out.

Item 10.

As Item 10, Petitioner calls the attention of the Court to the further falsification of which Counsel for Respondent has been guilty on page 11 of his brief; and in that he attempts to impose on the Court with two different meanings of the words "final settlement" and in less than ten lines apart. For Counsel there says:

> "The original order for sale provided that if either of the parties purchased the assets, he should be entitled *at the final settlement and payment of the purchase price* to use and apply towards the payment of such purchase price, such amount as the Receiver may fairly estimate to be his distributive interest in and to the said partnership assets."

It should be noted that the said Order for Sale (R. 231) required that the purchaser should complete the purchase within thirty days after confirmation. It is obvious then that the final settlement above referred to, was the final settlement and payment of the purchase price, to the Receiver, within the thirty days allowed for the completion of the purchase.

But in the next few lines, Respondent attempts to make a complete change in the meaning of the term "final settlement." For immediately following the quotation above set out, Respondent goes on to say:

> "It was the Receiver's duty to allow Petitioner only such credit as would leave a sufficient balance to protect the Receiver, *in the final settlement.*"

> "The amount of cash to be advanced under this mode of settlement was not final. The exact and final calculations would have been made on the final hearing on distribution of the fund."

The Court may observe, that the final settlement referred to in the first quotation, set out above; was the settlement of the purchase price with the Receiver within the 30 days allowed for that purpose. But the "final settlement" referred to just a few lines later by Respondent; is a mythical settlement, that Respondent has invented to add onto the terms of the Order of Sale.

The Court is further requested to note the change in Respondent's claims, as to the meaning of the terms of the Order for Sale, as Respondent now claims them to be; and as against what he claimed them to mean, when he was moving to have that Order for Sale adopted by the Court.

For on September 15, 1942, Respondent filed a memorandum, in opposition to Petitioner's motion for rehearing, as to the entry of the said Order for Sale. And in that said memorandum (R. 244) Counsel for Respondent urged:

> "Where both parties, as in the present case, are permitted by the order of sale to bid thereat, where each party may use as a credit upon the purchase his estimated distribution from the assets, the order is in all respects fair, and the rationale of *Cresse v. Loper* . . . does not apply."

(R. 246). "In respect to defendant's contention that the Receiver has no power to determine whether plaintiff must account for the $32,000 paid him as salary since June, 1936, it is respectfully submitted that this matter has been completely and finally adjudicated by the Court, and that the rights of the respective partners in and to the assets has been fixed by the confirmation of the Auditor's report."

It may thus be seen that in September, 1942, Counsel for Respondent claimed that the rights and interests of the partners, in and to the assets had been finally adjudicated by the Court; and that the rights of the respective partners in and to the assets, had been fixed by the confirmation of the Auditor's report, of July, 1936.

But after Petitioner had bought the business under that same Order for Sale, then Petitioner's rights and interests, in and to the assets, had no longer been determined by the Auditor's report. But instead Respondent now claimed that Petitioner should be assessed with $60,000 of receivership costs.

Item 11.

The attention of the Court is also requested to the further willful falsification of Counsel for Respondent, on page 11 of his said brief; and to the effect that—

> "Even though the Receiver would not allow Petitioner a credit in the amount to which Petitioner thought he was en-

titled, he lost nothing thereby, for any portion of his share that remained in the Receiver's possession would be paid him at the final accounting."

In other words, Respondent would have the Court believe, that although the Court was holding all of Petitioner's property, and to an amount of perhaps $150,000; that it would make no difference to Petitioner, whether Petitioner had then to raise perhaps $35,000, to pay as the balance due on the property or whether instead, Petitioner had to raise $150,000.

Respondent would also have the Court overlook the fact, that if Petitioner was unable to pay the excess demands of the Receiver, the property would then be resold at Petitioner's risk and cost. And so that thus Petitioner might lose from $50,000 to $100,000 or more, merely because of the illegal demands of the Receiver.

CONCLUSION

As a conclusion to this reply brief, Petitioner can do no better than repeat what Petitioner stated in his Petition; and that is that should Certiorari be granted, and the business be ordered turned over to Petitioner, under the terms of the original Order for Sale, at Petitioner's bid price of $240,500, and as of the original sale date of February 1, 1944, this 13 year receivership can be brought to a speedy close.

On the other hand, if Certiorari is denied, or the sale to Respondent affirmed, then the business will be plunged into further years of litigation.

Respectfully submitted,

EDWIN J. CREEL.

APPENDIX "B"

Chronological Reference List of Principal Events Antecedent to Petitioner's "Case I." Appeal No. 8770.

MARCH 13, 1942. MOTION BY RESPONDENT FOR ORDER FOR SALE. (R. 201.)

Motion based on claim by Respondent that all matters in litigation between the partners had been disposed of; that the interests of the partners in and to the assets had been finally determined; and that the case was in condition for the sale of the partnership business, and the distribution of the proceeds.

The same representation was made in the Order for sale itself; that is, that the interests of the Partners in the assets had been finally determined by the Auditor's report of 1939; and that each partner owned a one-half interest, but subject to a prior credit to Respondent of $4,933.69, on account of an alleged excess capital contribution.

MARCH 21, 1942. PARTIAL REPLY BY PETITIONER, IN OPPOSITION TO RESPONDENT'S MOTION FOR ORDER FOR SALE. (R. 201-206.)

Petitioner objected to provision (R. 214) that either partner could purchase; also to provision that if a partner became purchaser, he was to be given credit for what the Receiver might estimate to be his distributive interest in the assets. Petitioner also objected that no accounting had been had since the date of the former accounting as of July, 1936.

AUGUST 31, 1942. PETITIONER MOVED FOR AN ACCOUNTING, ETC. (R. 216.)

AUGUST 31, 1942. ORDER FOR SALE ENTERED BY DISTRICT COURT ON TERMS PROPOSED BY RESPONDENT. (R. 231.)

Said Order for Sale provided that all matters in litigation

had been settled; that the interests of the partners in the assets had been finally determined by the Auditor's Report (insofar as matters affecting the sale were concerned).

Said Order further provided:

1. All the assets of the partnership (except cash on hand) was to be sold at public auction.
2. Either partner could bid and become the purchaser.
3. If either partner became the purchaser, he should be entitled at the final settlement and payment of the purchase price, to use and apply towards the payment of such purchase price, such amount as the Receiver might fairly estimate to be his distributive interests in the assets.
4. $10,000 deposit to be made by the purchaser at time of sale.
5. Purchase to be completed within 30 days after confirmation.
6. On final settlement of the purchase, both partners were required to execute deed to purchaser for the property.
7. Receiver to continue to conduct business, until final settlement of purchase. Receiver to account to purchaser for proceeds, less expenses from time of sale to date of settlement.
8. All conveyancing and recording fees to be borne by purchaser.

SEPTEMBER, 1942. MOTION BY PETITIONER FOR REHEARING ON ENTRY OF ORDER FOR SALE. (R. 234.)

SEPTEMBER 15, 1942. REPLY OF RESPONDENT IN OPPOSITION TO PETITIONER'S MOTION FOR REHEARING. Respondent reiterated his claim that all matters in dispute had been settled, and that the rights of the respective partners in and to the assets had been finally determined by the Auditor's report.

NOVEMBER, 1942. NOTICE OF APPEAL BY PETITIONER FROM ORDER FOR SALE. (R. 246.)

OCTOBER 18, 1943. APPEAL OF PETITIONER FROM ORDER FOR SALE DISMISSED BY COURT OF APPEALS FOR FAILURE OF PETITIONER TO FILE RECORD. This failure being due to lack of funds.

OCTOBER 20, 1943. ORDER GRANTING ALLOWANCE OF $50,000 TO EACH OF TWO PARTNERS. (R. 264.)

Subject Matter of Appeal No. 8,770

FEBRUARY 1, 1944. SALE OF PROPERTY AT AUCTION. Bought in by Petitioner at bid price of $240,500. (R. 203.)

FEBRUARY 9, 1944. SALE CONFIRMED TO PETITIONER ON MOTION OF RECEIVER, AND WITH CONSENT OF RESPONDENT. (R. 283.)

Petitioner also asked confirmation. But Petitioner objected to time and manner of confirmation, and to the form of the Order of confirmation.

FEBRUARY 9, MARCH 6. ATTEMPTED INTIMIDATION OF PETITIONER by Respondent and the Receiver, as to loss of agencies and of employees, etc.; Receiver also gave bulk of employees their release under the War Manpower regulations.

MARCH 4, 1944. LETTER RECEIVED BY PETITIONER FROM RECEIVER transmitting tabular estimate by Receiver as to balance payable by Petitioner on purchase. (R. 379.)

MARCH 4, 1944. TABULAR ESTIMATE BY RECEIVER as to balance payable by Petitioner on purchase price. (R. 368.)

Said tabular estimate of Receiver (R. 368) shows Receiver raised price to Petitioner from bid price of $240,500 to $242,354 by means of demanding payment for miscellaneous credits of rent and insurance paid ahead; and all of which were sold to Petitioner in the original purchase.

Also, said tabular estimate (R. 369) shows that Receiver

estimated Petitioner's one-half interest in partnership, at $143,706; thus leaving balance payable on purchase price by Petitioner of $96,794.

Same sheet (R. 369) shows Receiver then demanded payment of $60,000 cash to cover alleged costs of receivership which Receiver there stated, Respondent now claimed should be assessed against Petitioner.

Receiver thus demanded Petitioner should pay a balance due of $158,218; instead of the $96,794, shown to be due by his own statement immediately above.

This was a demand by the Receiver for an excess payment of $62,248 over and above what his own figures showed it to be owing by Petitioner, as balance due on the purchase price.

The Receiver refused to give any explanation of his demand for payment of $60,000 for alleged receivership costs, other than that $20,000 was his estimate of receivership costs payable in the future.

On May 5th, or nearly two months later; the Receiver did give an explanation by letter of the basis for the $40,000 demanded as payment for past receiverships costs.

It was then apparent, that $5,000 of the said amount was the estimated cost for the sale to Petitioner on February 1.

The remaining $35,000 was for receivership costs previously paid, out of the partnership funds. One-half of that amount had been paid from Petitioner's share of the partnership funds. *The Receiver had thus demanded that Petitioner pay him over again for* $17,500 *of Receivership costs that had already been paid—by Petitioner.*

The further $20,000 demanded to cover future receivership costs, was likewise erroneous. For if Petitioner had taken over the business, by paying the $40,000 otherwise demanded by the Receivership; the receivership would have

been terminated; and there would have been no further, or very little of future receivership costs.

This was a total error of $37,500 out of the $62,248 of excess payments illegally demanded of Petitioner, as balance due by the Receiver.

MARCH 10, 1944. APPEAL WAS FILED BY PETITIONER (R. 298) FROM THE ORDER WHICH CONFIRMED THE SALE TO PETITIONER (R. 283).

This appeal of March 10 was noted by Petitioner for grievances set out in Petitioner's notice of appeal (R. 298).

Principally these were principally, that there was a variance (R. 299) between the terms of the Order for Sale, and the terms of the Order confirming sale to Petitioner; and in that by the Order for Sale, it was provided that Respondent was to execute a deed of the property to the purchaser; while by the terms of the Order confirming sale, it was provided that the Receiver was to execute the deed; and this change in terms was unacceptable to Petitioner.

Also, the Receiver had given Petitioner but four days notice of the presentation of the Order for confirmation, instead of the five days required by Rules of Court. This change brought Petitioner's time for settlement on March 10, and thus deprived Petitioner of an estimated $10,000 of additional cash to apply on the purchase price, and which could have been expected to come in on the 11th, the day of heaviest cash receipts, of the entire month.

Petitioner contends that by the filing of that said appeal of March 10, all jurisdiction over the subject matter of that appeal was transferred to the Court of Appeals, as of the afternoon of March 10.

Petitioner contends further that under the rule of *Bronson v. LaCrosse*, I Wall (68US) 405; 17 Law. Ed. 618; and as is set out in the record (R. 504); the filing of that appeal against the order in Petitioner's own favor, stopped

the execution of the Order of Confirmation; and so that the running of the time limit against Petitioner was also stopped as of the afternoon of March 10, and thus before the expiration of the 30 day period allowed to Petitioner, for settlement of the purchase.

Petitioner contends therefore, that with that time limit thus stayed, Petitioner could not thereafter be guilty of default.

Petitioner made no tender, because it was apparent that the Receiver intended to persist in his illegal demands, and so that any tender by Petitioner would have been a mere futility.

Petitioner contends also, that Petitioner was not guilty of any default, because Petitioner was not required to meet the illegal and unauthorized demands of the Receiver; and particularly as to payment of $17,500 of receivership costs already paid by Petitioner.

MARCH 22, 1944. AN ORDER FOR RESALE was entered by the District Court, against this Petitioner as an alleged defaulting purchaser; and *in the course of a summary proceeding against Petitioner by the District Court.* (R. 339.)

By that said Order for Resale; Petitioner was held in default. The $10,000 deposit was ordered returned to Petitioner; and, the "assets of Creel Brothers sold by the Receiver at public auction on February 1st," were ordered resold at Petitioner's risk and cost.

MAY 1, 1944. NOTICE OF APPEAL NO. 8,770 WAS FILED BY PETITIONER (R. 340) from the Order for Resale of March 22, 1944. (R. 339.)

MAY 1, 1944. THE SUPPOSED RESALE OF THE ASSETS WAS ADVERTISED TO TAKE PLACE MAY 1ST.

Prior to said resale, Petitioner handed the Receiver a letter (R. 362-367) in which Petitioner acknowledged re-

turn and acceptance of the $10,000 deposit to Petitioner, but without prejudice to Petitioner's right to appeal from that said Order for Resale; since the acceptance of that said $10,000 return to Petitioner was necessary for the protection of Petitioner's interests; and also it was returned in the exercise of an option to hold Petitioner for a greater risk of loss, under the supposed resale of the assets.

The said letter further notified the Receiver of the filing of Petitioner's notice of appeal from that said Order for Resale. (R. 367.)

The said letter further notified the Receiver that Petitioner in no wise acknowledged any validity in the Court Order for Resale of March 22, 1944. (R. 362-364.)

MAY 1, 1944. At the SUPPOSED RESALE OF MAY 1ST, Respondent bid $200,000. Petitioner raised the bid $500. Respondent then protested to the Receiver that Petitioner had no right to bid at a resale, when Petitioner declared the said Order for Resale to be illegal and void. Petitioner pointed out that the Order for Resale, by a reference to the Original Order for Sale (R. 231), had given Petitioner a specific right to bid and become the purchaser at the said Resale.

The Receiver then stopped the sale, and merely took the highest bid of both parties, and a $10,000 deposit from each (R. 344), and stated that he would report the bids to the Court.

Petitioner raised his bid to $235,000. Respondent raised his bid to $220,682, the amount of the appraisal of December 31, 1943.

MAY 12, 1944. PETITIONER CONSENTED TO DISMISSAL on May 12th (R. 923) of Petitioner's appeal of March 10th (R. 298) from the Order which confirmed the sale of February 1st to Petitioner.

That dismissal of the appeal of March 10th was consented to by Petitioner in favor of Appeal No. 8,770, and because

of the fact that Appeal No. 8,770 covered in better form the same subject matter as was covered by the said appeal of March 10th.

Conclusion as to Appeal No. 8,770.

It will be observed that Appeal No. 8,770, is the "Main Appeal" on which Petitioner relies to secure if possible the setting aside of the Order for Resale, and the turning over the business to Petitioner, under the terms of the original Order for Sale.

It will also be observed that the appeal of March 10th served as a "blocking" appeal. For while that appeal was in existence, Petitioner contends, all jurisdiction over the subject matter was transferred to the Court of Appeals.

Transfer of jurisdiction under the appeal of March 10th thus held good from March 10th to May 12.

And since the Order for Resale of March 22nd was entered by the District Court during that period, that said Order for Resale—under the rule of *Newton v. Consolidated Gas,* as set out in the record (R. 502)—is wholly illegal and void.

It may also be noted that Counsel for Respondent has never questioned the validity of that appeal of March 10th.

Subject Matter of Appeal No. 8,823.

MAY 16, 1944. AFTER THE STOPPING OF THE SUPPOSED RESALE OF MAY 1ST, because of Petitioner's bidding at that said resale, the Receiver reported the matter to the Court, at a hearing on May 16th. (R. 431.)

MAY 24, 1944. At the said hearing on May 16th, the Court gave instructions to the Receiver for the framing of a new "Order."

And on May 24th, the Court entered its said *"Order on the Receiver's Petition for Instructions."* (R. 466.)

By the terms of that said "Order on the Receiver's Petition for Instructions" of May 24th, the Court directed the rejection of both bids or offers made by Respondent and Petitioner at the supposed Resale of May 1st.

The Court further decreed by that said order, that Petitioner should have the "right" for 30 days to purchase *the assets that were offered for sale* on May 1st, *under the Order for Resale* of March 22, 1944, for the sum of $240,500, provided that Petitioner made full settlement in accordance with the terms of sale within 30 days. (R. 466.)

No one was authorized, however, to sell the said assets to Petitioner.

The Court further decreed by that said order of May 24th, that if Petitioner *failed to make full settlement within 30 days* from the date of that order; that then Respondent should have the right to purchase said assets, for the sum of $240,000; provided, that within five days after notification, that Petitioner had failed to make full settlement, within the 30 days specified; that Respondent should notify the Receiver of his election to purchase the said assets; and that he also deposit with the Receiver the sum of $10,000; full settlement in accordance with the terms of sale to be made within thirty days from the date of his election to purchase.

That said Order of May 24th further provided that the terms and conditions of sale to either Respondent or Petitioner should be as follows: Sale should be as of May 1, 1944, and all adjustments should be figured to that date.

Also, in final settlement, the purchaser should be entitled to use and apply toward the payment of the purchase price, such amount as the Receiver may fairly estimate to be his distributive interest in the assets. (R. 467.)

That said Order of May 24th also provided that the Receiver was authorized to continue to conduct the said

business until the final consummation of sale to either of said parties, and that he should account to the purchaser, for the proceeds of said business during the interval between May 1, 1944, and the final consummation of sale, less the expenses of the conduct thereof during such interim.

JUNE 13, 1944. AT THE TIME FOR SETTLEMENT OF THE FEBRUARY 1 SALE TO PETITIONER, the Receiver had demanded that Petitioner pay him $158,000 as balance due on the purchase price.

But under supposedly the same terms of sale—under the Order of May 24th—the Receiver demanded, in a letter of June 12th (R. 482) that Petitioner pay him only $120,000 in cash as the amount supposedly payable as balance due on the purchase price. That is, the Receiver estimated Petitioner's distributive half interest in some $310,000 of net assets, was only $120,500.

JUNE 22, 1944. UNDER DATE OF JUNE 22ND, and just one day before the expiration of Petitioner's supposed "option" to purchase, the Receiver finally supplied Petitioner with the data (in principal part) on which the Receiver had based his said estimate of $120,000 as the amount payable by Petitioner, as balance due on the purchase price.

It then developed that the Receiver had been demanding under the guise of adjustments, that Petitioner pay him over again for $6,850 of assets that would supposedly have been sold to Petitioner at the fixed price of $240,500, under that said Order for Sale of May 24th. The Receiver had likewise demanded that Petitioner pay him for $2,300 of goods in transit, and which also were assets of the firm, as of the specified date of sale of May 1, 1944. (R. 483.)

JUNE 23, 1944. AS A PARTNER, IT WAS POSSIBLE FOR PETITIONER AT ANY TIME TO MAKE A COMPROMISE SETTLEMENT OF THE SUIT.

And under proper terms, Petitioner might have bought

the business in the course of such a settlement, even under that said order of May 24th.

Any such settlement was impossible, however, in view of the exorbitant demands of the Receiver. On June 23rd, therefore, Petitioner filed notice of appeal against that said Order of May 24th. That appeal of June 23rd is Petitioner's present Appeal No. 8,823.

The grounds for Petitioner's Appeal No. 8,823 against the Order of May 24th were: that the said Order of May 24th was illegal and void; because, at the time is was issued, a valid appeal by Petitioner was pending against the Order for Resale; that being the present Appeal No. 8,870.

Also Petitioner was aggrieved by that said Order of May 24th. For, under the terms of that said order, the supposed sale by the Receiver, to Respondent, on June 27th, placed a lien against all earnings of the partnership, subsequent to May 1, 1944, and so that Petitioner has been unable to estimate his income tax since that date. Also, the bulk of the partnership funds, and which amount now to over $200,000 in cash, would be unavailable for distribution while that lien in favor of Respondent remains standing.

And since the placing of that lien on the firm funds was the immediate result of that said Order of May 24th, the placing of that said lien, is a change which affects the possession of property. The said order of May 24th is thus appealable, under the special provisions of the D. C. Code, Sec. 101, Title 17, as set out in the present Petition, p. 2.

It may be observed that after June 29th, there were two valid appeals pending by Petitioner, and covering the same subject matter, that is, the sale of the partnership business.

These two said appeals were: Appeal No. 8,770 that had been taken by Petitioner from the Order of Resale of March 22nd (R. 339), and Appeal No. 8,823, that had been

taken by Petitioner from the Order on Receiver's petition for instructions of May 24th (R. 466).

Subject Matter of Appeal No. 8,910.

AUGUST 30, 1944. *The Receiver was not authorized to sell the business to Respondent under the Order of May 24th; but, nevertheless he proceeded to do so.* (R. 476.)

Further, Respondent in his Brief, p. 14, states that the supposed sale to Respondent, *was but a continuation of the public sale of May 1, 1944.*

There is no requirement, in Sec. 847, that a public sale should be preceded by an appraisal, nor is there any requirement that the terms of such sale, meaning the price, must be published for at least ten days before confirmation.

Nevertheless, the Receiver had appraisers appointed, on June 29th, to make an appraisal of the business as of May 1st. (R. 496.)

There is no requirement for an Order Nisi in a public sale, but the Receiver had one entered on August 30, 1944. And there is no requirement that the Order Nisi itself should be published at least 10 days before such public sale.

The Court, however, directed that the said Order Nisi should be so published for at least ten days before the time proposed for confirmation of the sale to Respondent.

There is, however, a requirement that any public sale shall be at public auction; that the property shall be sold to the highest good bidder; and that the property must be sold at the place directed by the Court; and at the place advertised in the advertisements of the sale. There is also a further requirement for a valid public sale; and that is that the sale must be advertised at least once a week for four consecutive weeks.

None of these things were done in the supposed public sale to Respondent.

There is further no requirement that an Order Nisi should be published, for a valid private sale, under Sec. 847. There is however, a binding requirement that the terms of the private sale must be published. There is also a binding requirement that before a valid private sale can be made, a hearing must be held as to the necessity of such private sale, and the notice for such a hearing must be made in a manner directed by the Court.

No such notice of such hearing was ever given by direction of the Court. No such hearing was ever held and the terms of the proposed sale to Respondent were never advertised.

Instead a copy of the Order Nisi was published and it merely says that the offer of Robert T. Creel was to purchase the assets for the sum of $240,000 all cash, *subject to the terms of the Order of May 24th.* (R. 498.)

OCTOBER 9, 1944. Following this authorized procedure as to Order Nisi of August 30, 1944, the District Court then proceeded on October 9, 1944, to enter its Order finally confirming and ratifying the sale to Respondent. (R. 524.)

NOVEMBER 8, 1944. The present Appeal No. 8,910 (R. 533) was then filed by Petitioner, against that said Order of October 9th.

Conclusion as to Petitioner's Second Main Appeal No. 8,910.

It will be observed that Petitioner's first "Main" Appeal is Appeal No. 8,770; and under it, Petitioner asks that the Order of Resale, of March 22nd, be reversed and quashed; and that the partnership business be then ordered turned over to Petitioner—under terms of the original order of sale—and at the

bid price of $240,500—and as of the date of the original sale to Petitioner, February 1, 1944.

It will be observed that the appeal of March 10, 1944, was used merely as a "blocking appeal." It thus insured the invalidity of the Order for Resale, of March 22nd; and from that said Order for Resale, the present main appeal, No. 8,770, was then taken.

It may further be observed, that under Petitioner's second main appeal, Petitioner asks that the supposed confirmation of sale to Respondent, as of October 9, 1944, be set aside and quashed, as wholly illegal and void, both for total violation of the statutory provisions governing the sale of real estate, and because the assets sold cannot be identified, and because two valid appeals were pending, when the said order confirming sale to Respondent was issued, and so that the District Court had no jurisdiction over the subject matter; and, finally, because any such sale to Respondent would have to be set aside as fraudulent per se,—on the mere demand of this Petitioner—because of the double fiduciary relation of Respondent to the partnership.

It may also be observed—as an aid to orientation of the four appeals—that Appeal No. 8,823, served primarily as a prior blocking appeal, to insure the invalidity of the later Order of confirmation of sale, to Respondent, and from which said order for confirmation, Petitioner's second "Main" Appeal, No. 8,910, was then taken.

The "Bunching" of the Three Appeals in the Court of Appeals.

One of the principal means, by which Counsel for Respondent has been able—for 13 years past—to carry on the abuse of receivership in this case—has been that of so loading the record, with endless falsification of law and of fact, and of a continuous "smear campaign" carried on against this Petitioner, that the real issues in the case, and the fraud that was being carried on, were completely obscured by that smoke screen.

As part of this same general scheme, the first two appeals in this case, were held up in the Court of Appeals, by motions to dismiss, until the third Appeal No. 8,910 could be brought up and combined with the other two. (R. 893.)

Then, in total violation of this Petitioner's constitutional rights, the Court of Appeals on January 27th, entered an order that Petitioner would be limited to but a single 75 page brief, covering all three of the said appeals. (R. 907.)

Finally, the Court of Appeals, in its decision, assigned no reasons, and filed no opinion in any of the three cases, other than a mere footnote reference, to some half dozen cases, none of which have any legitimate bearing on any of the three appeals. (R. 913.)

SUPREME COURT OF THE UNITED STATES

EDWIN J. CREEL

Petitioner

vs.

ROBERT T. CREEL

Respondent

AFFIDAVIT OF EDWIN J. CREEL AS TO UNCLEAN HANDS OF RESPONDENT

DISTRICT OF COLUMBIA, ss

I, Edwin J. Creel, Petitioner in the above entitled cause; being first duly sworn, depose and say:

That I am defendant partner in the partnership dissolution, receivership and accounting case of Creel versus Creel, Equity 55,407, in the District Court of the United States for the District of Columbia.

For nearly 13 years past, I have been made the victim of a fraudulent and criminal abuse of Receivership in this case; and my constitutional and Federally guaranteed rights have been flouted, and violated, without any pretense of concealment.

For the past several years, I have given repeated warning that it was my intention to seek criminal prosecution of those guilty of the obviously criminal abuse of this receivership against me. Each time, however, on final consideration, it has seemed advisable to delay taking that action.

My reasons for so delaying are set out in general outline in the record (R. 901-904).

It has now become necessary for me to seek that criminal prosecution. The result will inevitably be to precipitate sooner or later, and probably immediately, a scandal of the gravest character, and of National proportions.

It is believed the gravity of the situation will be made apparent to the Court, by the statement that the bulk of the records in the case—and these constituting a pile nearly five feet high—have been criminally stolen, hidden, or destroyed.

The situation is as bad as it could well be. For Respondent now stands guilty on the record of indictable criminal perjury; and in that he swore in July, 1943, that this Petitioner had consented to his employment as manager under the Receiver, at a salary of $100 a week; and so that he has been paid some $65,000 during the 13 years of the Receivership; while during the first 10½ years of the receivership, Petitioner was given a total allowance from his property of only $4,310.

Counsel for Respondent now stands guilty on the record of subordination of perjury for the same reason. Respondent and Counsel for Respondent, and the Receiver, now also stand guilty on the record, of criminal conspiracy for their successful attempt to prevent me from taking over the business in February and March, 1942.

For while the Receiver was making a sworn statement to the Court, that the business was in imminent danger of collapse, the business was actually earning more than it did the year before. My own estimates for the business years 1943, 1944, and 1945, show that the business earned approximately $72,000 in 1943; $86,000 in 1944; and that it is now earning at a rate of over $100,000 per year. The Receiver's estimates are approximately the same.

The purpose of this affidavit is to call both the foregoing and certain further facts to the attention of the Court; and all of which show falsification, that has apparently been made with clear intent to trick and deceive the Court.

The attention of the Court is therefore called to the willfully false implication set out in the first paragraph on page 2 of Respondent's brief; and to the effect that Petitioner's appeal had

been taken from an Order confirming the sale to Respondent of certain assets *formerly owned* by the partnership.

The facts are that the said assets are still owned by the partnership; and that although the partnership business has a net worth in excess of $500000 and there is no supersedeas to prevent Respondent from taking over that partnership business, at a price of less than half that amount; Respondent has made no move for so taking it over; because he is well aware that the assets supposedly sold to him cannot be identified; and that the sale would have to be set aside in any case on the mere demand of this Petitioner.

The Court is further advised that although the Receiver is directed, by Order confirming sale to Respondent, to execute the deed to Respondent; yet nevertheless, the Receiver has twice sent me blank deeds with a request that I execute a conveyance to Respondent.

The Court is further advised that the Receiver is again sending out financial statements listing the cash item, as "Cash on hand and in bank" although the Receiver told the Court, that he had never heard of anyone thinking that "cash on hand" did not also include the bank balance.

It is believed that—for present purposes—the remaining items are sufficiently shown by the record, and have been sufficiently set out in body of Petitioner's reply.

Respectfully submitted,

EDWIN J. CREEL.

Subscribed and sworn to before me this day of December, 1945.

My commission expires

Notary Public in and for the District of Columbia.

(33)

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

Nos. 587, 588, 589.

EDWIN J. CREEL
Petitioner

vs.

ROBERT T. CREEL,
Respondent

PETITION FOR REHEARING ON DENIAL OF PETITION FOR WRIT OF CERTIORARI.

EDWIN J. CREEL,
in proper person.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

Nos. 587, 588, 589.

EDWIN J. CREEL
Petitioner

vs.

ROBERT T. CREEL,
Respondent

PETITION FOR REHEARING ON DENIAL OF PETITION FOR WRIT OF CERTIORARI.

To the Honorable, The Chief Justice and Associate Justices of the Supreme Court of the United States:

Your Petitioner, Edwin J. Creel prays that a rehearing or reconsideration be granted to Petitioner's Petitions Nos. 587, 588, and 589, for writs of Certiorari in this cause.

Jurisdiction of the Court to Consider Evidence De Hors the Record as to Unclean Hands of Respondent.

Although Petitioner has found no specific ruling by this Court on the matter; it is Petitioner's understanding that Courts generally consider the Unclean Hands rule, to be a matter of public policy, and one that affects their jurisdiction to act further in the matter; and as such, that unclean hands of a party is a matter that can be considered by this Court on affidavit. Petitioner's authorities to this effect are set out on page 3 of the Reply Brief by Petitioner in this cause.

Th reasons why the Court should grant reconsideration as to denial of the Writ of Certiorari in this cause, are—in Pettioner's opinion—of great weight, as regards the merits; but they are even more compelling, as to the surrounding facts in this case; and the more serious of which, are indicated in the partly completed Petition to the President, for appointment of a Special Prosecutor, in this cause.

Petitioner therefore files a copy of that as yet incomplete Petition to the President, as a statement of fact in support of this motion for rehearing; and Petitioner files also herewith an affidavit that all matters of fact and of opinion, stated therein, are substantially true as stated.

Petitioner, also includes a statement of certain new matters of fact, in the statement of grounds below; and all of such matters are likewise covered by the same affidavit.

Grounds.

As a partial statement of the grounds for the requested reconsideration: Petitioner respectfully submits the following for the consideration of the Court.

I. For reasons indicated only in part in the said Petition to the President, and in further small part below; it is Petitioner's belief that this case will be plunged almost immediately, by the filing of that Petition, into a nation-wide scandal of such proportions, that the Judge Johnson case will seem almost ~~trifling~~ minor in comparison.

It is Petitioner's opinion therefore that this Court should give the most careful consideration, to any possibility, that this Court might seem to have had no concern, as to the wrong that has been done in this case, during the 13 years of this receivership.

II. On a strictly legal basis; the major question in this case is as to a confirmed purchaser's right to an appeal; from a decree entered during the course of a summary proceeding by the District Court, against the said purchaser, as an alleged defualter. And obviously, if Petitioner had no right to an appeal, from that order for resale as entered against this Petitioner; then legislative action to supply such a remedy would be imperatively necessary.

III. The necessity for closing up this Petition in time to meet the extension granted; makes it impossible to state the further grounds. Petitioner therefore asks the most careful consideration by the Court, of the statement of fact, as set out in the Petition to the President, which is filed as an Appendix hereto.

Respectfully submitted,

EDWIN P. CREEL.

District of Columbia: ss.

I, Edwin J. Creel, being first duly sworn, according to law, depose and say that I have read Appendix I to this motion for rehearing; and that all matters of fact and of opinion stated therein, I believe to be substantially true as stated.

Signed EDWIN J. CREEL.

Subscribed and sworn to before me this 8th day of Feb., 1946.

R. deB. Waggaman
~~NORMA SPARNELL~~,
Notary Public in and for the
District of Columbia.

My commission expires ~~Jan. 14, 1947~~.
MAY 1, 1950

APPENDIX I

COPY

IN THE OFFICE OF THE PRESIDENT.

Petition of Edwin J. Creel:

For appointment of a special prosecutor to prosecute for a fraudulent and criminal abuse of Receivership, that has been carried on for thirteen years past, in the case of Creel vs. Creel, in the District Court of the United States for the District of Columbia; and more particularly to prosecute for specific offenses committed during the past three years, as follows:

(a) For perjury and for subornation of perjury.

(b) For criminal violation of Petitioner's Federally guaranteed rights.

(c) For widespread corruption of Court officials.

(d) For criminal conspiracy to fraudulently sell a $500,000 partnership business to the plaintiff partner, through a fictitious and illegal judicial sale.

(e) For criminal conspiracy to illegally suppress official Court records.

(f) For criminal destruction or theft of the bulk of the official Court records in the case.

(g) For numerous attempts to assassinate this petitioner in furtherance of the said conspiracy.

To The President:

Your Petitioner, Edwin J. Creel, respectfully prays the apponitment of a special prosecutor—under the constitu-

tional authority of the President to see that the laws are properly executed—for investigation and prosecution of a fraudulent and criminal abuse of receivership, that has been carried on against this Petitioner, for thirteen years past; in the partnership dissolution, receivership and accounting case of Creel vs. Creel—Equity case No. 55,407—in the District Court of the United States, for the District of Columbia.

Danger of Involvement of the Administration.

For reasons later stated, it is petitioner's opinion that this case must break very shortly, into the worst scandal that has ever affected any branch of the American Government.

The administration is not now involved in the scandal. But, nevertheless, it is petitioner's opinion, that extraordinary efforts will be made; to inveigle the administration into a position where it will appear, either that the administration is passively winking at, or is in active collusion with, the conspirators in this case.

It is to petitioner's personal interest, to attempt to see that the Administration does not becomes thus involved; and that is one of the more immediate aims of this petition for appointment of a special prosecutor.

References to the Record.

The principal facts in the litigation are set out in the printed record which accompanies this petition, and which is entitled "Appendix to Appellant's Brief." References to the rceord, such as "(R. 2)" are to be understood as a reference to p. 2 of that Appendix.

PRELIMINARY STATEMENT AS TO THE CIVIL SUIT.

Following is a brief outline of the more important facts concerning the partnership business, and of the dissolution suit, to which the said conspiracy relates.

The Partnership Business

The partnership business concerned is that of Creel Bros., a comparatively large auto parts and electric service business, of 1811 14th St., N. W., Washington, D. C.

That business had estimated net assets on Jan. 15th, 1946, with all bills paid to the first of the month, in excess of $500,000. The business has apparent net earnings in excess of $100,000 per year. And with bills paid to the first of the month, it had cash on hand and in bank on Jan. 15th, of approximately $235,000.

Interests of the Partners

It is admitted that each partner owns a one-half interest in the partnership; and excepting only that through a corrupt finding of the Auditor in the accounting, the plaintiff partner was given a prior credit, for an alleged excess capital contribution of $4,933.

Initiation of Suit, and Appointment of Receiver.

The litigation was begun by the filing a Bill of Complaint filed by the Plaintiff partner, Robert T. Creel, on Feb. 28, 1933; and in which he asked for dissolution, receivership, and accounting (R. 2).

A receiver was appointed March 30, 1933 (R. 53).

General Aim of the Said Conspiracy.

The general aim of the said conspiracy has been first, to secure control—for the plaintiff partner—of what is now a $500,000 partnership business, through criminal abuse of a Federal receivership; and then, second, to take advantage of that control of the business; to enable the said plaintiff partner to fraudulently acquire the said partnership business, through a fraudulent and illegal judicial sale.

Conflict With Established Principles of Partnership Law.

Any such proposed seizure and acquisition by one partner in a partnership business—over the continued protest of

his co-partner—would be preposterous in any other jurisdiction; unless that jurisdiction were openly corrupt.

For under the universally established rules of partnership law—and more particularly in the sixteen states where the Uniform Partnership Act is in effect—and these include the adjoining states of Maryland and Virginia—a partner is rigidly held to be a fiduciary for the partnership and is thus forbidden to deal with, or to purchase the partnership property, for his own benefit, or without the consent of his co-partner.

And if he does so deal with the partnership property for his own benefit; such a transaction is held fraudulent *per se*. No inquiry as to the fairness of any such transaction is even permitted to be raised; and any such transaction must be set aside on the mere request of the co-partner.

Furthermore, the disability of a partner to deal with the partnership property, extends not only throughout the ordinary life of the partnership; but it also continues after dissolution, and until the last asset of the partnership is disposed of.

The Successful Carrying On of the Said Conspiracy for Thirteen Years.

But, despite these universally established principles of partnership law; the conspiracy in this case has now been carried through—supposedly—to a successful conclusion. And this has obviously been accomplished by widespread corruption of District Court officials; and also—very apparently—by means of powerful bureaucratic backing, of a seemingly quite obvious sort.

The Successful Seizure of Control of the Partnership Business by Plaintiff.

The first of the above said aims of the general conspiracy was successfully carried through on the filing of the bill of complaint, and the appointment of the receiver in March 1933.

For substantially all of this Petitioner's property—and

to an estimated amount of $100,000—was seized through that receivership; and that property was then turned over to the control of the plaintiff, as manager under the Receiver.

Plaintiff was then paid a salary of $100 a week from the partnership funds, as a so-called salary from the Receiver. And during the next 10½ years; while Plaintiff was being paid some $54,000 as a so-called salary—and while the business was estimated to have earned in excess of $300,000 —Petitioner was given a total allowance from his share of the joint property of only $4,130.

The first phase of the aforesaid general conspiracy, was thus overwhelmingly successful. For, by throwing the business into Receivership; Plaintiff had not only secured substantially complete control of the partnership business for himself; but he had also secured the illegal payment of some $54,000 of the firm's funds as a so-called salary from the Receiver. And finally, by restricting the total allowance to Petitioner, to $4,130 for the 10½ years, Plaintiff had made it impossible for Petitioner to carry on any adequate defense against that outrage.

A more detailed statement of the manner in which this seizure of control of the partnership business, was planned and carried through is as follows:

Fraudulent Character of the Demands Made on Petitioner, by Plaintiff, Prior to the Receivership.

In the period prior to the filing of the Bill of Complaint; the Plaintiff had alienated and secured control of certain vital agencies of the partnership.

Counsel for plaintiff then made various fraudulent demands on Petitioner, for sacrifice of Petitioner's interests in the partnership—and in particular that Petitioner should sacrifice his claim to repayment of an advance of $25,000 in cash; that Petitioner had advanced to the partnership in 1925, at a time when otherwise the business would have gone bankrupt.

Among the said demands, was one that Petitioner

be paid $100 a week, or $5,200 a year, for his usurpation of the management; and also that Plaintiff should be paid that salary "before equal division of the profits was made"; and by this, Counsel meant that Petitioner should sacrifice his claim to repayment of the aforesaid $25,000 advance (R. 9).

Appointment of Plaintiff as Manager Under the Receiver.

These said demands by Plaintiff on Petitioner were made under threat of receivership if refused. And on Petitioner's refusal to accede to those said demands; Plaintiff then had the business thrown into Receivership, and on his mere assertion that irreconcilable differences had arisen between the partners.

Then, through threats made on the Receiver, that a vital agency contract of the partnership would not be renewed, unless plaintiff were appointed manager under the Receiver; Plaintiff had himself appointed manager at a salary of $100 a week; and as he had demanded of Petitioner, and had been refused.

Attempted Blackmail of Petitioner, Through the Shutting Off of Petitioner's Income.

By this fraudulent means, Plaintiff had not only secured complete contral of the partnership business for himself; and a salary of $100 a week as he had demanded of Petitioner; but also he had had substantially all of Petitioner's property—and to an estimated amount of $100,000—seized through the receivership; and then turned over to plaintiff's control, as manager under the receiver.

Petitioner was then denied any adequate allowance from his shre of the joint property, and either for Petitioner's living expenses, or for carrying on Petitioner's defense against that outrage.

This arrangement continued for 10½ years, or until October 1943. During that 10½ years, the business is estimated to have earned in excess of $300,000. Of that amount, Plaintiff had been paid some $54,000 as a salary from the receiver, and a further $3,200 as an allowance.

And Petitioner—during the same 10½ years—while the business was earning an estimated $300,000 as aforesaid; was given a total allowance from his property of $4,130; or less than $8 a week for the period. An additional $1,070 was, however, paid to the Government, by the Receiver, as income tax on the share of partnership earnings, that Petitioner had never received.

The Supposedly Successful Carrying Through of the Fraudulent Sale to Plaintiff.

The second of the above said general aims of the conspiracy—that is, the intended fraudulent sale of the Partnership property to Plaintiff—has now also, supposedly, been carried through to a successful conclusion.

The manner in which this further phase of the general conspiracy has been carried on, is as follows:

The Fraudulent Plan to Make a Fictitious Sale of the Business to Plaintiff.

Early in 1942, or after more than 10 years of that attempt to blackmail petitioner into a surrender of Petiioner's interests in the partnership, to the Plaintiff; it seemingly became apparent to Counsel for Plaintiff, that Petitioner could not be coerced in that fashion.

The aim of the conspiracy was then changed to have the partnership business put up for sale at public auction; and under terms which would appear to indicate a fair public sale; but which terms were, in fact, so arranged that no one other than Plaintiff could become the purchaser.

That is, no outsider would dare to bid on the property, because the business is an agency type business, and, if the agencies are lost, the business would be almost worthless. Plaintiff, however, as manager under the receiver since 1933, had been in position to alienate and secure control of the agencies ,and of the trained personnel of the firm and so that if any one else purchased the business, Plaintiff could then take the agencies, and the trained personnel, and start up his own business in opposition; and thus leave a mere wreck of the business for the purchaser.

No outsider would thus dare to bid on the property, and none did so bid at the public sale. Furthermore, the property was appraised at $220,000 in early 1944. Any purchase by an outsider was further debarred by the provision in the Order of Sale, that the entire purchase price must be paid in cash. Any outsiders were thus effectually barred from bidding.

The $50,000 Allowance to Petitioner in October, 1943.

It was necessary for Plaintiff's plan, that there should be an appearance of competitive bidding, at the intended fraudulent sale to Plaintiff. But since no outsider was likely to bid on the property; this left only Plaintiff and Petitioner as possible purchasers.

Plaintiff therefore inserted an illegal provision in the said Order for Sale, that either partner could bid and become the purchaser at the public sale. And, to escape the requirement as to all cash—as required of outsiders—it was further provided in the said Order for Sale; that if either partner became the purchaser, he was to be given credit, on the final settlement and payment of the purchase price, for such amount as the receiver might fairly estimate to be his distributive interest in the assets.

And from this last provision, it followed that even if Petitioner should become the purchaser; he would be prevented from completing that purchase, by fraudulent estimates by the receiver, as to the amount payable as balance due on the property.

The Sale of the Partnership Business to Petitioner on February 1, 1944.

At the time of the first public auction of the partnership business, on February 1, 1944; Petitioner had the choice either of permitting Plaintiff to buy in the business at his own figure, and according to the corrupt calculations of the Receiver; or otherwise for Petitioner to bid in the business, well knowing that the business would either be wrecked, by

the Receiver and by Plaintiff, or that Petitioner's right to complete the purchase would be defeated.

Petitioner chose to fight it out on this latter line. Petitioner therefore bid in the business at $240,500; this being a raise of $80,500 from the first bid by Plaintiff.

That sale was confirmed to Petitioner on February 9th, 1944, with the express consent of Plaintiff. The sale to Petitioner was thus wholly legal and valid.

The Defeat of Petitioners' Federally Guaranteed Right to Complete That Purchase.

The sale to Petitioner, however, was then defeated by the willfully illegal and fraudulent demands made by the Receiver, on Petitioner, as to the amount payable by Petitioner, as balance due on the property.

The Receiver thus demanded that Petitioner pay him over again for $2,448 of assets such as insurance paid ahead and the like; and which said assets had been sold to Petitioner in the original purchase price.

The Receiver further demanded that Petitioner should pay him $60,000 to cover receivership costs, that Plaintiff now claimed should be assessed against Petitioner.

But of that $60,000 of receivership costs so demanded by the Receiver; $35,000 of the amount had already been paid out of partnership funds. And one-half of that amount, or $17,500 had alredy ben paid by Petitioner, or out of Petitioner's share of the joint funds.

Petitioner refused to complete the purchase, under those illegal and fraudulent demands of the Receiver. Instead, on March 10, 1944, Petitioner filed notice on appeal, against the terms of the order by which the sale of the partnership business had been confirmed to Petitioner. *And by that appeal of March 10th, the District Court was stripped of any further jurisdiction over the subject matter.*

The Illegal Order for Resale of March 22nd.

But—despite the lack of any jurisdiction of the District Court to enter any further orders affecting the merits,

while that appeal of March 10th, by Petitioner, was pending—and despite the illegality of the demands made on Petitioner, by the Receiver, as to the amount payable as balance due—and including the $17,500 already paid by Petitioner—*The District Court on March 22nd, entered an Order for resale,* and which said order held Petitioner in default for failure to complete the purchase under the illegal demands made by the Receiver. It ordered the return of a $10,000 deposit to Petitioner; and it further ordered the resale of the assets sold to Petitioner, at Petitioner's risk and cost.

Petitioner's Appeal of May 1st from the Order for Resale.

It will be observed that Petitioner bought the partnership property, not as a partner, but as an individual, and with the consent of Plaintiff.

It will also be observed, that the Order for Resale, was not entered as a part of the partnership dissolution proceedings. Instead that Order for Resale was entered in the course of a summary proceeding, by the Court, against the Petitioner, as an individual; and—supposedly—to enforce Petitioner's individual contract with the Court, for the purchase of the property.

It appears to have been almost uniformly held, heretofore, that when Petitioner became a bidder, he became—in that capacity—a new party in the suit; and as such, Petitioner had a right of appeal from any later orders entered against his interests as a bidder and purchaser.

Such a rule is obviously necessary, because otherwise few would dare to bid at a judicial sale. For, if they did, they might be made subject to illegal demands, as to the price they must pay for the property. They might then be held in default; and the property be ordered resold, at their risk and cost—and perhaps to their complete ruin—and they would still have no right of appeal, nor any other redress, against such an order.

On May 1st, therefore, and prior to the time of the sup-

posed resale, Petitioner filed notice of appeal, against the said Order for Resale of March 22nd. That appeal by Petitioner is generally referred to herein as Appeal No. 8,770.

The Fictitious Resale of May 1st.

There has never been much room for question, but that the whole fraudulent Pretense of a public sale, was merely being carried through so that the business could be sold to Plaintiff, with some pretense of legality.

It had thus apparently been supposed, that because of the fact that Petitioner had been held in default—and because the property had then been ordered resold, at Petitioner's risk and cost—that Petitioner would thereby have been so intimidated, that Petitioner would not dare to bid at the resale of the property; and so that the property could then have been sold to Plaintiff, as originally planned.

At the said supposed resale on May 1st, however; Petitioner again outbid Respondent. And under those conditions, the Receiver stopped the sale, and merely took deposits, and the bids of the two partners, to report to the Court. And since it was obvious that Petitioner could not be kept out of any public sale; no further attempt was made to make a public resale of the property.

No Estoppel Arises Against Petitioner Because of Such Protective Bidding.

In this connection it should be noted that under established principles of law; no estoppel arises against a party, because of any action taken by the party, where such action was necesary for the protection of his interests; and such as bidding on, or buying in a property that is being sold by Court order; and when at the same time the party is appealing from that order.

This rule is set out in vol. 4, Corpus Juris Secundum, Sec. 399, Par. 212, p. 399, as follows:

> "A waiver (of right to appeal) is not implied from acts done or measures taken by appellant in defense of,

and to protect his rights or interests, as where for such purpose he purchases property ordered to be sold by the judgment or decree."

It was necessary for the protection of Petitioner's interests for Petitioner to bid at that resale of May 1st. And that bidding by Petitioner therefore sets up no estoppel against Petitioner's appeal from the Order for Resale, under which that supposed resale was held; nor does it debar Petitioner from denying any right of Plaintiff to become the purchaser without Petitioner's consent.

Report of the Receiver on the Abortive Resale of May 1st.

After stopping the supposed resale of May 1st, as before stated, because of the bidding by Petitioner at that sale; the receiver on May 16th, presented his report to the Court, on that abortive attempt to sell the business to Plaintiff.

The Receiver further presented to the Court, the bid of Plaintiff made at the May 1st resale, of some $220,000; and the bid of Petitioner of $235,000.

Preliminaries to the Actual Illegal and Fraudulent Sale to Plaintiff.

It is further to be observed that with the abandonment of any attempt at a public resale under that Order for Resale, almost all pretense of any further legality in the proceedings was abandoned.

Similarity to the Character of Proceedings Charged Against Judge Johnson.

The Judiciary Committee of the House, has just released the report of its investigation of the activities of Federal Judge Johnson, now under indictment on conspiracy charges and for acceptance of bribes, etc.

In that said report, the House Judiciary Committee charges Judge Johnson, among other crimes—

"With participation in conspiracies to dispose of re-

ceivership assets to pre-arranged buyers for whom favorable purchase conditions were created by rulings from the bench."

And in a complaint to be filed by Petitioner against those guilty of alleged conspiracy, in this case; Petitioner will charge that that indictment, by the House Judiciary Committee, against Judge Johnson; is completely and fully applicable to the actions of Mr. Justice Goldsborough in this case.

The Two Methods Permitted by Federal Statute for the Judicial Sale of Any Interest in Land.

As a reported corrective, for abuses in the '93 depression; Congress, in 1893, passed Sec. 847, of Title 28, USC; which provides that any interest in land—that is sold at Federal Judicial sale—must be sold at public auction, and on the premises, or at the Court house, as the Court may direct. And by Sec. 849, it was required that no such sale should be made until the said sale had been advertised for four weeks.

In 1934, however, and as a relief from hardships resulting from the 1930 depression; Section 847 was amended to permit a sale of realty, at private sale, if—on petition, and after a hearing—the Court found that the best interests of the estate would be conserved thereby.

But in the case of a private sale; Section 847 provides (1) that the terms of sale must be advertised for ten days preceding the sale; (2) that the property must be appraised; (3) that it cannot be sold for less than two-thirds of the appraised value, and (4) that such private sale shall not then be confirmed where a valid offer is made for an increase of 10% in the published sale price.

The Apparent Bar Against Private Sales of Realty, Where the Property is in the Hands of a Receiver.

The amendment to Sec. 847 permitting private sales of realty, was enacted in 1934, and was further amended in

1935, to eliminate the requirement that the Court could act only on Petition. The requirement for a hearing, however, was retained.

Statutory Requirements as to the Two Types of Sales.

By these two general provisions of Sec. 847, it thus stands —according to established rules of statutory construction— that realty can be sold at public or private sale, but with rigid requirements as to proceedure in each case.

As regards public sales, it is required that the sale must be on the premises, or at the Court house, as the Court may direct; and the time and terms of sale, etc., must be advertised for four separate weeks preceding the sale.

As regards a private sale, the sale can be ordered only after a hearing, and after a finding that the best interests of the estate will be conserved thereby, and after notice has been given of such hearing by publication or otherwise, as the Court may direct; the terms of sale must be advertised ten days before the final confirmation; and the sale shall not then be confirmed, if a 10% higher bid is made.

The Apparent Requirement for a Public Sale, Where the Property is in the Hands of a Receiver.

By a later amendment to Sec. 847—in 1935—two seemingly restrictive provisions were added. For by this later amendment, it was provided that if the "property" is in two or more judicial districts, or states, ets.; or if the property is in the hands of a Federal receiver at the time it is offered for sale; the said property must be sold at public sale.

By established rules of statutory construction, it appears that these two specific provisions, overrule the more general provision that permits a sale of realty at private sale.

It thus appears that where, as in this case, the property offered for sale, was in the hands of a receiver, at the time it was offered for sale, it must be sold at public sale.

The Court Order of May 24th.

As stated, the receiver's report on the resale was presented to the Court on May 16th. On May 24th, the Court entered a so-called "Order on the Receiver's Petition for Instructions".

By that order, the Court rejected the bids of both partners and further ordered the return of the $10,000 deposit to each party.

The Court further provided in that said order of May 24th; for a sale of the partnership business, under terms and conditions which are in nowise authorized by the Statute, that governs the judicial sale of any interest in land.

The Supposed Sale to Plaintiff as a "Continuation" of a Public Sale.

The facts are, as claimed by Counsel for Plaintiff, in his brief in the Supreme Court; that the District Court—in its said order of May 24th—acted on the assumption, that after a property had been offered for sale at public auction, and after such sale had been advertised for four weeks, as required by statute; that then the District Court has power to reject the bids made at the public sale; and that the District Court can then proceed to sell the said property, in any way that it sees fit; and that it can do this as a supposed "continuation" of the public sale.

The facts are however, that Sections 847 and 849, Title 28, U.S.C., which govern the judicial sale of any interest in land; provide for but two ways, in which any interest in land can be sold; and that is, either as a public, or a private sale; and under rigid restrictions, as to the manner in which either is to be conducted.

And not only is there no provision, for any sale as a continuation of a public sale; but, further, the statute ~~expressly~~ debars any such possibility. The supposed sale to Plaintiff, therefore; as a "continuation" of the Public Sale of May 1, 1944, is wholly illegal and void.

The Actual Terms of the Court Order of May 24th.

Under the terms of the Court Order of May 24th, 1944, (R. 466); Petitioner was given the right to purchase the assets for $240,500, provided Petitioner completed the purchase within 30 days. No one however was authorized to sell the property to Petitioner.

It was further provided that if Petitioner failed to complete the purchase within 30 days; that then Plaintiff should have the right to purchase the assets for $240,000; provided, that within five days after receiving notice that Petitioner had failed to complete the purchase; that Plaintiff then deposited $10,000 with the receiver and notified the receiver of his election to purchase the property; and that full settlement in accordance with the terms of sale should be made within 30 days from the date of Plaintiff's election to purchase.

It was further provided that the terms of sale as to either party should be as follows: Sale to be as of May 1, 1944, and all adjustments to be figured to that date. And in final settlement, the purchaser should be entitled to use and apply toward the payment of the purchase price, such amount as the Receiver may fairly estimate to be his distributive interest in and to the partnership assets.

The Receiver was further authorized to account to the purchaser for the proceeds of said business between May 1st, and the date of final consummation of sale, less the expenses of the conduct during such interim.

Illegality of the Order of May 24th.

It will be noted that the said order of May 24th is wholly illegal and void. For the supposed sale it provides for, to either party, is not a public sale; because the supposed sale was not to be made on the premises, or at the Court house, as directed by the Court; nor was the said sale to be advertised for four weeks as required by Sec. 849.

The said sale provided for in the said order, was not to be a valid private sale, because no hearing as to the necessity for any such private sale was ever held; and no notice,

by order of the Court, was ever given as to the holding of any such hearing.

Finally, any private sale of the partnesrhip property, is apparently debarred by statute; because the property, at the time it was offered for sale, was in the hands of a receiver.

And no continuation of any public sale is authorized by Sec. 847 or 849; for any such "continued sale" would not have been made on the premises, or as advertised for four weeks prior to such sale; and a sale made anywhere else would be invalid.

Petitioner's Refusal to Purchase Under That Illegal Order.

Petitioner, as a partner, could of course settle the suit on any terms that might be agreed to by the partners. Petitioner however refused to purchase under the illegal terms of that said order.

The "Sale to Plaintiff" by the Receiver.

On June 24th, the Receiver notified Plaintiff that Petitioner had failed to complete the purchase within the 30 days allowed.

Plaintiff filed notice of his election to purchase, and made a $10,000 deposit, as required by the order. Plaintiff did not however complete the purchase of the business in 30 days, as required by that said order.

Instead, on Aug. 30, 1944, the receiver had an Order Nisi entered by the Court; in which the acceptance of Plaintiff's election, by the Receiver, was affirmed. The Order Nisi further specified, that unless cause to the contrary were shown by Oct. 9th, 1944; the sale to Plaintiff would be finally ratified and confirmed.

Confirmation of Sale to Plaintiff.

The sale to Plaintiff was then confirmed and ratified by the District Court on Oct. 9th, 1944. That order of confirmation by the District Court was then affirmed on appeal

by the Court of Appeals on May 21, 1944; and on the ground that no error was found in the record.

Petitioner's appeal from the Order for Resale, which was entered aginst this Petitioner, on March 22nd, 1944, was dismissed by the Court of Appeals as having been taken from a non-appealable order.

Current Status of the Supposed Sale to Plaintiff.

The current status, of the supposed sale of the partnership property to Plaintiff, is that although no supersedeas was filed by Petitioner; and there has been nothing to prevent Plaintiff taking over the business on payment of the purchase price; yet that sale to Plaintiff has never been completed.

And in Petitioner's opinion, the reason is, that Counsel for Plaintiff is well aware, that the said supposed sale to Plaintiff is wholly illegal and void; for violation of mandatory statutory provisions of Sections 847 and 849, Title 28, U.S.C.

That is, the said supposed sale to Plaintiff was not a valid public sale, because the property was not sold at public auction; nor on the premises, or at the Court House, as directed by Court order; nor after four weeks advertising as required by Section 849.

And the said supposed sale to Plaintiff was not a valid private sale; because no hearing was ever held as to the necessity for any such private sale; no notice was ever given by Order of the Court, of the holding of any such hearing; and the terms of such sale were never advertised. Instead it was merely advertised that the terms of sale were all cash, subject to the terms of the Court Order of May 24th; and that is not an advertising of the terms of sale.

Further, any private sale of the said property would be invalid because the property was in the hnds of a Federal Receiver when it was offered for sale.

Also, the assets supposedly sold to Plaintiff cannot be identified, and so the said sale cannot be carried out.

Finally, even though the sale should be carried through in some fashion; it would immediately have to be set aside as fraudulent *per se*, on the demand of this Petitioner; and this because Plaintiff is debarred from any such purchase, without the consent of this Petitioner, because Plaintiff stands in a double fiduciary relation to the partnership; and in that he is both a partner, and is manager under the Receiver; and, in both capacities he is forbidden to deal with the partnership property for his own benefit.

And thus to carry out the sale to Plaintiff, would be a mere futility; for it would have to be set aside on the demand of this Petitioner; unless the Courts are prepared to abandon principles that have been held inviolate since the beginning of the Republic.

Impending Scandal in the Case.

This case now stands as a substantially ~~complete~~ breakdown of the Federal judiciary machinery in the District of Columbia.

And because of certain special factors in the case; it is Petitioner's opinion that this case will break almost immediately into the blackest scandal that has ever affected any part of the American Government. It is Petitioner's opinion, indeed, that the Judge Johnson case, now going on in Pennsylavnia, is mere child's play to the scandal that is ready to break in this case.

For during the early years of the receivership; the conspiracy in this case was carried on with at least a pretense of fictitious legality. But, for the last several years, all ~~pretense~~ appearance of legality has been abandoned..

And during this past several years; perjury, and subornation of perjury, have been openly committed, and have been consistently disregarded by the Courts.

Falsification of law, and open disregard of established principles of law; and cynical violations of Petitioner's Fedarally guaranteed rights; have been openly carried on without any pretense of concealment or any legality.

And to cover up, and to keep concealed from the public, the fraud that has been carried on in this case, the bulk of the official court records in the case—and these constituting a pile nearly five feet high—have been criminally stolen, or criminally hidden or destroyed.

Finally, to prevent any further exposure of this criminal misconduct; and to insure that the now supposedly successful, but fraudulent acquisition of the partnership business—by the plaintiff partner—shall not be disturbed; numerous attempts have been made to assassinate this Petitioner.

Request for Prosecution Limited to Offenses Committed Principally During the Past Three Years.

It will be understood, that because of the running of the three year statute of limitations, any individual offenses committed during the first ten years of the receivership, can now be prosecuted only as component parts of a general and continuing conspiracy.

For this reason, the alleged criminal abuses of this receivership, during the first ten years of its existence, have been relegated to a position of secondary importance, as far as this petition is concerned.

An outline of the circumstances of that first ten years, will therefore be set out only very briefly herein, and primarily for the purpose of establishing an overall criminal intent for the entire 13 year period of the conspiracy.

For the same reason, this present petition is limited generally to a request for prosecution for specific offenses that have been committed principally within the past three years; or which said offenses are at least directly connected with current phases of the general conspiracy.

REQUEST FOR PROSECUTION FOR SPECIFIC OFFENSES.

Petitioner now asks specifically for prosecution for specific offenses—by conspiracy or otherwise—that have been committed principally during the past three years, and which are as follows:

I

Petitioner asks prosecution for willful perjury committed by Plaintiff, and willful subornation of perjury, by Counsel for Plaintiff, in July, 1943.

That is, in July 1943, Plaintiff filed a motion for an allowance of $50,000 to each of the two partners. At that time however, Plaintiff had been illegally paid some $54,000 as a salary by the Receiver; and—under partnership law—was holding that amount as trustee for the partnership.

The only defense to the claim by Petitioner that Plaintiff must account for that amount to the partnership—or at least the bulk of it—was a claim by Plaintiff that Petitioner had consented to that payment to Plaintiff.

In support of that said motion therefore; Plaintiff filed an affidavit in which he swore to a willfully false statement to the effect that the original receiver—one E. Q. Smith, now deceased—had appointed Plaintiff manager, with the consent of Petitioner, at a salry of $100 a week. (R 250)

Plaintiff and Counsel for Plaintiff know that that statement was willfully false. For the facts were that Plaintiff had demanded that Petitioner pay him a salary of $100 a week, for his usurpation of the management; and when Petitioner refused that demand; Plaintiff then had the business thrown into Receivership, and then used that means of obtaining that salary from the receiver, and this was well known both to Plaintiff and to his attorneys; and this is fully shown by the record.

II.

Petitioner asks prosecution of Plaintiff, and Counsel for Plaintiff, and the Receiver; for conspiracy to defraud the

United States, by arranging, in 1942, to have the partnership business put for sale, supposedly at a lawful public sale, but actually in such fashion that only Plaintiff would be permitted to become the actual purchaser.

III.

Petitioner asks prosecution of the Receiver and Plaintiff and Counsel for Plaintiff, for conspiracy to oppress and injure, and to threaten and intimidate this Petitioner; and thereby to prevent Petitioner from exercising his right to complete the purchase of the partnership business, as confirmed to Petitioner—with the consent of Plaintiff—by the District Court.

IV.

Petitioner asks prosecution of Plaintiff, and Counsel for Plaintiff, and the Receiver, for conspiracy to sell the partnership business to Plaintiff by means of a fraudulent and illegal arrangement; which Counsel for Plaintiff terms a "continuation" of a public sale; but which said continuation is in fact, in direct violation of the statute governing the Federal Judicial sale of any interest in land.

V.

Petitioner asks prosecution of Plaintiff, and Counsel for Plaintiff, for conspiracy, in 1939, to have a valid paper filed by Petitioner in the District Court, in support of a motion for an allowance to Petitioner, stricken and physically removed from the files. (R 178)

VI.

Petitioner asks prosecution of those guilty of criminally removing from the files of the District Court; a paper filed by Petitioner on March 21, 1942; and entitled "Partial Reply by Defendant", etc. (R 201)

VII.

Petitioner asks prosecution of Plaintiff and Counsel for Plaintiff, for criminal conspiracy to steal and destroy, or

to have criminally stolen or destroyed, the bulk of the official Court records in this cause—these said missing records constituting a pile nearly five feet high.

VIII.

Petitioner asks prosecution of Plaintiff, ~~the~~ and Counsel for Plaintiff—if sufficient legal evidence can be obtained—for criminal conspiracy to assassinate, or to have the Petitioner assassinated, through poisoning, and so that thereby Petitioner would be unable to move to have the sale of the Partnership property set aside, as fraudulent per se; and as is now the established rule governing such cases.

(Note: The foregoing Petition to the President for appointment of a special Prosecutor, is now in preparation but is not yet completed. The present portion is therefore submitted as a statement of fact in support of Petitioner's Petition for Rehearing on Denial of a Petitioner for Writ of Certiorari, in the Supreme Court of the United States.)

EDWIN J. CREEL,

Petitioner.

(37)

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

Nos. 587, 588, 589.

EDWIN J. CREEL
Petitioner

vs.

ROBERT T. CREEL,
Respondent

MOTION FOR DELAY IN CONSIDERATION OF PETITION FOR REHEARING

EDWIN J. CREEL,
in proper person.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

Nos. 587, 588, 589.

EDWIN J. CREEL
Petitioner

VS.

ROBERT T. CREEL,
Respondent

MOTION FOR DELAY IN CONSIDERATION OF PETITION FOR REHEARING

To the Honorable, The Chief Justice and Associate Justices of the Supreme Court of the United States:

Comes now the Petitioner, Edwin J. Creel, and respectfully prays:

That consideration of Petitioner's pending motion—for rehearing—on denial of Petition for Writs of Certiorari—be delayed; in order that the Court might give simultaneous consideration, to the said motion for Rehearing; and to a complaint and petition; for institution of disbarment proceedings—against Counsel for Respondent—and which said complaint will be filed herein by Petitioner, within the next week or ten days.

Grounds.

As grounds for the motion, Petitioner respectfully shows to the Court:

I.

As indicated, Petitioner is preparing to file in this Court, within the next week or ten days; a complaint and Petition for institution of disbarment proceedings, against Counsel for Respondent—Messrs. Leon Tobriner and Selig C. Brez —and under authority of Rule 2, paragraph 5, of the Rules of this Court.

It is Petitioner's opinion that the statement of fact contained in that Petition for institution of disbarment proceedings, and in its accompanying exhibits—which include copies of two petitions to be filed by Petitioner, with Congressional committees, in regard to this case—should be in the hands of the Court; and should be given careful consideration by the Court before final judgment is passed on Petitioner's pending motion for rehearing in this case.

The Petition to the Judiciary Committee of the House.

Accompanying that petition for disbarment,—and as a statement of fact in support thereof—will be a copy of a complaint and petition to the Judiciary Committee of the House o fRepresentatives; for an investigation of the criminal abuse of this receivership during the past 13 years; and for impeachment proceedings to be instituted against the judges guilty of knowingly aiding in the said conspiracy.

More particularly, Petitioner will ask for impeachment of those guilty of the long continued, and now supposedly successful attempts, to sell the partnership business to Respondent at a fraudulent and fictitious judicial sale; and where the said sale had been so arranged, that no one other than Resopndent could become the actual purchaser of the business.

The Petition for Passage of a Uniform Partnership Act.

Accompanying that said petition for disbarment also—and as a further statement of fact in support thereof—will be a copy of a petition to both houses of Congress, for passage of a Uniform Partnership act for the District of Columbia; and so that Petitioner will have specific statutory authority to back Petitioner's demand, for the setting aside of the said fraudulent sale to Respondnet; if—and when—that sale is carried through, and as is now obviously planned.

Similarity of the Conspiracy Charged in this Case, to that Charged Against Former Federal Judge Johnson.

The Judiciary Committee of the House of Representatives has recently filed its report on the criminal misconduct of former Federal Judge Johnson, who is now under indictment in Pennsylvania on criminal conspiracy charges, and for acceptance of bribes, etc. And in that report, the Judiciary Committee charges Judge Johnson, among other crimes with the following:

> "With participation in conspiracies to dispose of receivership assets to pre-arranged buyers, for whom favorable conditions were created by rulings from the bench."

In Petitioner's said complaint to Congress, however, it will be shown that in the present receivership, it was not merely a matter of arranging "favorable conditions" for the purchase by Respondent. Instead, three completely different attempts were made, before a scheme could be found, by which the business could be actually sold to Respondent. And it was then sold to Respondent—or at least the sale was confirmed to Respondent—under a scheme which is a gross violation of the statutory provisions, which govern the judicial sale of any interest in land.

The Three Attempts to Sell the Business to Respondent.

At the first of the said attempts, the business was sold at public auction, under an order for sale, which was so framed that supposedly no one other than Respondent would purchase the business.

That is, outsiders were debarred from purchasing by reason of the fact that the business was appraised at $220,000 and the order for sale required payment of "all cash"; except for a $19,200 mortgage on the real estate. Also, Respondent, by reason of his employment as manager under the receiver, for 13 years past, has alienated and secured control of the vital agencies of the partnership. Thus if any outsider had bought the business; plaintiff could take away the agencies; and so leave but a mere wreck of the business that had been sold to the said purchaser.

It was obvious that no outsider would risk $200,000 in cash on any such trap; and no outsider made any bid at the public sales of the property.

This left but Respondent and Petitioner, as possible purchasers. Respondent therefore forced through, in the order for sale—and over Petitioner's protest, the illegal provision, that either partner could bid at the auction, and become the purchaser.

It was further provided, in the said order of sale; that if either partner became the purchaser, he should be entitled—on the final settlement and payment of the purchase price—to use as a credit on such payment, such amount as the Receiver might fairly estimate to be the said partner's distributive interest, in and to the partnership assets.

And since Petitioner would be unable to pay the full price in cash; this last provision meant that in case Petitioner did become the purchaser; that the sale to Petitioner could be defeated, by means of a fraudulent estimate by the Receiver, as to the amount to be allowed Petitioner as a credit on the purchase price. And by this means, it was further provided that only Respondent, could actually become the purchaser at the said judicial sale.

However, in order to insure that Petitioner could act as a dummy bidder; Respondent forced through a motion giving each partner a $50,000 allowance; and in so doing Respondent committed willful perjury, as set out on p. 21, of Appendix I, of the pending motion for rehearing.

Defeat of Petitioner's Purchase of the Property.

It was clearly supposed that Petitioner, would not actually dare to purchase the property, because of Respondent's control of the agencies.

Petitioner, however, was forced to buy in the property, at the public auction, in order to protect Petitioner's interests therein. The sale was then confirmed to Petitioner, with the consent of Respondent; and was thus completely legalized, as regards the bar otherwise against the purchase of trust property by a fiduciary.

That sale to Petitioner was then defeated however, by illegal and fraudulent demands made by the Receiver, as to the amount payable as balance due on the property by Petitioner. That is, the receiver demanded that Petitioner should pay over again for $2,248 of assets already purchased by Petitioner at the original sale. Also the receiver demanded that Petitioner pay him $60,000 to cover alleged receivership costs, but which costs had never been assessed against Petitioner, by the Court; and $17,500 of which amount had already been paid by Petitioner.

On March 10th, Petitioner had filed notice of appeal, against certain terms of the order confirming the sale of the partnership business to Petitioner; and so that the District Court no longer had any jurisdiction over the subject matter.

But nevertheless, on Petitioner's refusal to meet the aforesaid illegal demands as to the balance payable on the property; the Receiver had the District Court, on March 22nd, issue an order for resale, which held Petitioner in default, and ordered the return of the $10,000 deposit to Petitioner; and which also ordered the assets purchased by Petitioner, to be resold at Petitioner's risk and cost.

The Second Attempted Sale to Respondent.

A second attempt was made to sell the business to Respondent, at the supposed resale; and which said resale was held on May 1st, 1944. For apparently it was supposed that Petitioner had been intimidated, and would not dare bid at the supposed resale; and so that the business could then be resold to Respondent, and apparently at a $40,000 loss to Petitioner.

At the said resale, however, Petitioner again outbid Respondent. The Receiver then stopped the sale, took the bids and deposits of both partners; and then merely reported to the Court, the said bids of $235,000 by Petitioner, and of $220,000 by Respondent.

That report was made to the Court on May 16th. On May 24th, the Court—Mr. Justice Goldsborough, entered an order which rejected both bids, and ordered the return of the deposits to both partners. No further attempt was then made to make a public sale of the business to Respondent.

Instead, Mr. Justice Goldsborough, in that said order of May 24th, then further outlined a scheme whereby the business could be sold to Respondent without interference by Petitioner; though in total violation of the mandatory provisions of Sections 847 and 849, Title 28, U. S. C. which govern Judicial sales of any interest in land, by a Federal Court.

The Third Attempted Sale to Respondent.

In accordance with this third scheme for the sale of the business to Respondent; Mr. Justice Goldsborough entered an order on May 24th, 1944, for the sale of the property; but which said order did not conform in any way to the statutory requirements, aforesaid.

That is, Sec. 847 provides two ways for the sale of any interest in land. One is a public sale, after four weeks advertising, and the sale must be made on the premises, or at the Court house, as directed by Court order.

The second method is by a private sale. But this can

be ordered only after a hearing as to the necessity for such private sale; and after the parties have been given notice of such hearing in a manner directed by the Court. The property must be appraised, and cannot be then sold at less than 2/3rds the appraised value. The terms of the sale must be advertised for ten days before final confirmation; and the sale cannot then be confirmed, if a 10% higher offer is made for the property. .....

It appears however, that the said general provision of Sec. 847, which permits a private sale of real estate; is overruled by a later and more specific provision of that said section; which provides that if the property is in the hands of a Federal receiver—at the time it is offered for sale—it must be sold at public sale.

It thus appears that since the property, was in the hands of a receiver, it could only be sold at public sale, after four weeks advertising; and on the premises, or at the Court house, as directed by Court order.

As will presently appear, the supposed later sale to Respondent, under the Court order of May 24th, is thus wholly illegal and void, for violation of statutory provisions, governing the sale of real estate by a Federal Court.

Illegal Provisions of the Order of May 24th.

Under the terms of the Court Order of May 24th, 1944, (R. 466); Petitioner was given the right to purchase the assets for $240,500, provided Petitioner completed the purchase within 30 days. No one however was authorized to sell the property to Petitioner.

It was further provided that if Petitioner failed to complete the purchase within 30 days; that then Plaintiff should have the right to purchase the assets for $240,000; provided, that within five days after receiving notice that Petitioner had failed to complete the purchase; that Plaintiff then deposited $10,000 with the receiver and notified the receiver of his election to purchase the property; and that full settlement in accordance with the terms of sale should be made

within 30 days from the date of Plaintiff's election to purchase.

It was further provided that the terms of sale as to either party should be as follows: Sale to be as of May 1, 1944, and all adjustments to be figured to that date. And in final settlement, the purchaser should be entitled to use and apply toward the payment of the purchase price, such amount as the Receiver may fairly estimate to be his distributive interest in and to the partnership assets.

The Receiver was further authorized to account to the purchaser for the proceeds of said business between May 1st, and the date of final consummation of sale, less the expenses of the conduct during such interim.

Petitioner's Refusal to Purchase Under That Illegal Order.

Petitioner at that time had a valid appeal pending, though later denied by the Court of Appeals—against the order for resale, which had held Petitioner in default, and ordered the resale of the property at Petitioner's risk and cost. Also, Petitioner asked, under that appeal that the business be ordered turned over to Petitioner, under the terms of the original sale to Petitioner, as of Feb. 1, 1944.

The Court thus had no jurisdiction to enter its order of May 24th. Furthermore, no one was authorized by that order to sell the property to Petitioner; and also, the assets to be resold, could not be identified.

Petitioner therefore refused to attempt to purchase under that illegal order of May 24th; and as had been planned of course, from the inception of that order.

The "Sale to Plaintiff" by the Receiver.

On June 24th, the Receiver notified Plaintiff that Petitioner had failed to complete the purchase within the 30 days allowed.

Plaintiff filed notice of his election to purchase, and made a $10,000 deposit, as required by the order. Plaintiff did not however complete the purchase of the business in 30 days, as required by that said order.

Instead, on Aug. 30, 1944, the receiver had an Order Nisi entered by the Court; in which the acceptance of Plaintiff's offer, by the Receiver, was affirmed. The Order Nisi further specified, that unless cause to the contrary were shown by Oct. 9th, 1944; the sale to Plaintiff would be finally ratified and confirmed.

Confirmation of Sale to Plaintiff.

The sale to Plaintiff was then confirmed and ratified by the District Court on Oct. 9th, 1944. That order of confirmation by the District Court was then affirmed on appeal by the Court of Appeals on May 21, 1944; and on the ground that no error was found in the record.

Petitioner's appeal from the Order for Resale, which was entered aginst this Petitioner, on March 22nd, 1944, was dismissed by the Court of Appeals as having been taken from a non-appealable order.

Illegality of the Supposed Sale to Respondent.

It will be noted that the said supposed sale to Respondent, is wholly illegal and void; for violation of the mandatory provisions of Secs. 847 and 849, Title 28, U. S. C.

That is, the said supposed sale to Plaintiff was not a valid public sale, because the property was not sold at public auction; nor on the premises, or at the Court House, as directed by Court order; nor after four weeks advertising as required by Section 849.

And the said supposed sale to Plaintiff was not a valid private sale; becuase no hearing was ever held as to the necessity for any such private sale; no notice was ever given by Order of the Court, of the holding of any such hearing; and the terms of such sale were never advertised. Instead it was merely advertised that the terms of sale were all cash, subject to the terms of the Court Order of May 24th; and that is not an advertising of the terms of sale.

Further, any private sale of the said property would be

invalid because the property was in the hands of a Federal Receiver when it was offered for sale.

Also, the assets supposedly sold to Plaintiff cannot be identified, and so the said sale cannot be carried out.

The Established Criminality of the Illegal Sale to Respondent.

It will be noted that any question as to the criminal character of the carefully framed sale to Respondent in this case; has seemingly been eliminated by the charges made by the Judiciary Committee of the House, as to the impeachable misconduct of Judge Johnson. For Judge Johnson is there charged:

> "With participation in conspiracies to dispose of receivership assets to pre-arranged buyers for whom favorable purchase conditions were created by rulings from the bench."

In Petitioner's complaint to the Judiciary Committee, of the House of Representatives, it will be pointed out that that charge, as made by the Committee against Judge Johnson, is completely and fully applicable to the obvious conspiracy between Mr. Justice Goldsborough, and the Receiver, and Respondent, and Counsel for Respondent, in this case.

And in Petitioner's opinion, it is equally evident that the conspiracy between Mr. Justice Goldsborough, and the Receiver, and Counsel for Respondent, is as subject to prosecution as is that charged against Judge Johnson, in the Pennsylvania case.

The Further Criminal Character of the Supposed Sale to Respondent.

It is further to be noted, that the sale to Respondent, which has thus been pushed through with such complicated manoeuvering, is not only illegal and void, for violation of statutory provisions; but also, under the established principles of law which govern the fiduciary obligations of part-

ners, any such sale to Respondent would be a mere futility; for it would have to be set aside as fraudulent per se, on the demand of this Petitioner.

And this is true, because Plaintiff is debarred from any such purchase, without consent of Petitioner, because Plaintiff stands in a double fiduciary relation to the partnership; and in that he is both a partner, and also, he has been manager under the Receiver, for nearly 13 years past. And in both capacities, he is forbidden to deal with the partnership property for his own benefit.

The Possible Conspiracy to Frame a False Estoppel Against Pettioner.

It is obvious that the complicated conspiracy in this case was not carried through, with any idea that the sale to Respondent could be nullified by any mere demand of the Petitioner.

At the very least therefore, it can be judged that a further criminal conspiracy has been planned to set up a false estoppel against Petitioner; and under color of which, a corrupt Court would hold that Petitioner had given his consent to such a purchase by Respondent.

Two attempts at setting up such a false estoppel have already been made by Counsel for Respondent.

That is, it appears that it is proposed to claim, that where Respondents had the partnership business put up for sale; and in such fashion that Petitioner was compelled to bid at such sale—in order to protect Petitioner's interest in the property—that thereby, Respondent also was given a right to become the purchaser of the property; and that Petitioner is then estopped to deny that alleged right to Respondent.

It is well settled however, as set out in authorities cited in the record (R. 856-858) that no estoppel arises against a party from any action that he is compelled to take to protect his own interests; and such for example, as bidding at a judicial sale under an order from which the said party has appealed.

The Second Attempt to Set Up a False Estoppel.

As a second, and further attempt to set up a false estoppel against Petitioner; Counsel for Respondent makes the false claim that Petitioner had himself suggested that the property be sold at public autcion, and that both partners should be permitted to bid thereon. Counsel misrepresents certain statements made at a Court hearing before Mr. Justice Bailey, in support of that false claim. (R. 245).

The facts were that Petitioner claimed that by reason of the purchase of the firm's building, on a 14 year contract; that thereby the partnership became a partnership for a 14 year term (R. 567).

Petitioner claimed further that Respondent had wrongfully broken that agreement, (R. 567) and that therfeore, Petitioner—as the non-wrongdoing partner—should have the right to take over the business, in accordance with the provisions of the Uniform Partnership Act; even though that act had not been enacted in the District, and even though no Federal Court had ever passed on that point.

But that right, so claimed by Pettioner, was not available to Respondent; because he denied that the partnership was a partnership for a 14 year term. Furthermore, even had that right been recognized by the District Court; it would have lapsed, in 1938, at the end of the 14 year term, in any case.

It was thus not true, that Petitioner had urged that both partners should have the right to bid on the property; but merely that the District Courts should adopt the said provision of the Uniform Partnership Act, and permit Petitioner to take over the business as the non-wrongdoing partner. But that right would have expired in 1938, in any case.

The $500,000 Price on Petitioner's Life.

It will be noted, that the District Court, and Respondent, and Counsel for Respondent, and the Receiver, have expended enormous effort in carrying through a sale to Re-

spondent; and which sale the law stamps as fraudulent per se. As such, under established principles of law, that sale to Respondent is—supposedly—a mere futility; for—legally—it must be set aside on the mere demand of this Petitioner.

It is also to be noted that the bulk of the Court records in the case have been either criminally concealed, or criminally stolen or destroyed. And this destruction too should seemingly be not much better than a futility; for both Petitioner and Respondent, have copies of the missing files; and Petitioner can force the replacement of copies in the Court files, in lieu of the missing papers; and as Petitioner did in fact do in respect to one missing paper, (R. 231, R. 924).

It is also to be noted that the decision of the Court of Appeals in this case, has placed what amounts practically to a $500,000 price on Petitioner's life. For, if Petitioner should suddenly die, accidentally or otherwise; Plaintiff would then take over the $500,000 partnership property without opposition; and Petitioner's relatively small equity in the partnership, could then be wiped out by a mere order of the District Court, assessing high receivership costs against this Petitioner. All that thus stands between Respondent and possession of a $500,000 business, that is earning over $100,000 a year, is the life of this Petitioner.

The More Sinister Explanation of the Seemingly Futile Sale to Respondent, and for the Destruction of the Court Records.

It is Petitioner's opinion that Counsel for Respondent, in forcing through that seemingly futile sale to Respondent, has placed no real reliance on the setting up of false estoppels against this Petitioner.

Instead, in Petitioner's opinion, there is ample evidence to show that the plan has been to prevent any action by Petitioner—toward the setting aside of the sale to

Respondent—by the attempted assassination of this Petitioner.

Numerous attempts have thus been made to assassinate Petitioner through poisoning. And, in Petitioner's opinion, there is a fair chance that sufficient legal evidence may be obtainable, to permit of prosecution for conspiracy to murder. And this is one of Petitioner's purposes, in asking for the appointment of a special prosecutor.

The Impending Scandal in the Case.

It is Petitioner's opinion that this case now represents an all but complete breakdown of the judicial machinery in the District of Columbia. It is further Petitioner's opinion that this case must inevitably break, almost immediately, into the worst scandal that has ever affected any part of the American Government.

It is further Petitioner's opinion that the Judiciary Committee of the House of Representatives, will hold that the obviously fraudulent framing, of the fictitious sale in favor of Respondent, in this case; is even more flagrant than in the Johnson case in Pennsylvania; and that impeachment proceedings are called for, even more imperatively in the present case.

It is further Petitioner's opinion that certain of Petitioner's discoveries in physics; and one group of Petitioner's shipping inventions, are now of immense importance to the National defense program; and to the proper evaluation and further testing of the atomic bomb; and more particularly, as to the determination of the question, as to the future size and character of the American Navy.

It is Petitioner's opinion, for these and other reasons, that Petitioner will have little difficulty in having a Uniform Partnership Act passed for the District; and that therefore, the sale to Respondent, even though it should be carried through, would then have to be set aside under provisions of that act.

The Petition to the Judiciary Committee of the House of Representatives will be filed probably within the next week. It is Petitioner's opinion that this Court should have available the more complete statement of facts, as will be set out in that said petition; before passing finally on Petitioner's Motion for Rehearing in this cause.

Petitioner therefore prays that this further minor delay be granted, in the final consideration of Petitioner's pending motion for rehearing, as to the denial of writs of certiorari in this cause.

Respectfully submitted,

EDWIN J. CREEL.